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IN THE UNITED STATES DISTRICT COURT

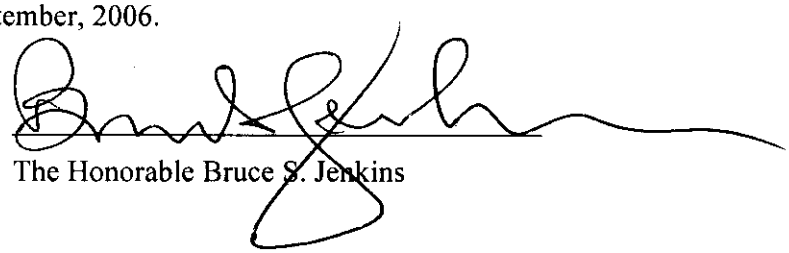
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

ORBIT IRRIGATION PRODUCTS, INC., Plaintiff, v. YUAN MEI CORP., et al., Defendants.	**ORDER GRANTING EX PARTE MOTION FOR LEAVE TO FILE OVERLENGTH MEMORANDUM** Civil No. 1:01 CV 0051 BSJ Judge: Bruce S. Jenkins
YUAN MEI CORP., et al., Counter-Claimants, v. ORBIT IRRIGATION PRODUCTS, INC., et al., Counter-Defendants.	

Having considered Plaintiff and Counter-Defendant's, Orbit Irrigation Products, Inc. and K.C. Erickson ("Orbit") Ex Parte Motion to for Leave to File Overlength Memorandum, and good cause appearing therefore,

IT IS HEREBY ORDERED that Orbit's Ex Parte Motion for Leave to File Overlength Memorandum is GRANTED for its Reply Memorandum in Support of Orbit's Motion for Summary Judgment of Non-infringement of the Utility Patents.

DATED this 18th day of September, 2006.



The Honorable Bruce S. Jenkins

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2006, I electronically filed the foregoing ORDER GRANTING EX PARTE MOTION FOR LEAVE TO FILE OVERLENGTH MEMORANDUM with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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884965

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DIANA MURILLO, Defendant.	**ORDER OF RELEASE** Case No. 1:03CR062 TC Honorable Tena Campbell

This matter came before the Court on September 13, 2006, for plea and sentencing. Defendant was present with counsel, Vanessa M. Ramos. The United States was represented by Michael Kennedy. The Court imposed a sentence and ordered that Defendant be released from custody with credit for time served. Accordingly,

IT IS HEREBY ORDERED that Defendant be released from the custody of the United States Marshal immediately.

SIGNED BY MY HAND this 21 day of September, 2006.

BY THE COURT:

Tena Campbell

HONORABLE TENA CAMPBELL
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. PEDRO CORRILLO-TAPIA, Defendant.	:	ORDER OF RECUSAL Case No. 1:04-CR-00106

I recuse myself in this criminal case, and ask that the appropriate reassignment card be drawn by the clerk's office.

Dated this 13th day of September, 2006.

BY THE COURT:

David K. Winder

David K. Winder
Senior U.S. District Judge

Judge Tena Campbell
DECK TYPE: Criminal
DATE STAMP: 09/19/2006 @ 15:52:54
CASE NUMBER: 1:04CR00106 TC

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AGUSTIN GIL, Defendant.	**ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL** Case No. 1:04 CR 176 DB Chief Magistrate Judge Samuel Alba

This matter has been reviewed by the Court on a Motion to Withdraw as Counsel filed by A. CHELSEA KOCH, Assistant Federal Defender; the Court being fully advised and good cause appearing, IT IS HEREBY ORDERED:

A. CHELSEA KOCH, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant.

Dated this 21st day of Sept., 2006.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

EDIZONE, LC, Plaintiff, v. CLOUD NINE, LLC, et al., Defendants. CLOUD NINE, LLC, et al., Counter-Claim Plaintiffs, and Third-Party Plaintiffs, v. EDIZONE, LC, Counter-Claim Defendant, and TERRY PEARCE, et al., Third-Party Defendants.	MEMORANDUM DECISION AND ORDER STRIKING THE ADDITIONAL AFFIDAVIT OF EDWARD EARL ELSON AND DENYING PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE AFFIDAVIT Case No. 1:04-CV-117 TS

This matter is before the Court on two motions: (1) Defendants' Motion to Strike Additional Affidavit of Edward Earl Elson,[1] and (2) Plaintiff's Motion for Enlargement of Time to File Additional Affidavit of Edward Earl Elson.[2] Both motions relate to Plaintiff's June 19, 2006 filing of a Supplement to Appendix in Support of Motion for Partial Summary Judgment

[1]Docket No. 339.

[2]Docket No. 354.

for Infringement of the Patents at Issue, wherein Plaintiff provided the Additional Affidavit of Edward Earl Elson ("Additional Elson Affidavit").[3] Because Plaintiff filed its corresponding summary judgment motion[4] a month earlier, on May 19, 2006, Defendants seek to strike the Additional Elson Affidavit as untimely. Plaintiffs oppose Defendants' Motion and alternatively seek an extension of time from the Court so as to retroactively accept the affidavit.

I. *Defendants' Motion to Strike*

Pursuant to Fed. R. Civ. P. 12(f), Defendants move to strike the Addition Elson Affidavit because it was untimely as filed subsequent to the Plaintiff's corresponding motion.[5] Defendants correctly point out that Fed. R. Civ. P. 6(d) states that "[w]hen a motion is supported by affidavit, the affidavit *shall* be served with the motion[.]"[6] However, Rule 12(f) is an improper vehicle for Defendants' Motion.

Rule 12(f) states that "upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or

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[3]Docket No. 330. The affidavit is so referenced because an earlier affidavit by Elson was attached to Plaintiff's Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment of Invalidity of All Asserted Claims of U.S. Patent Nos. 5,749,111 and 6,026,527. Docket No. 298.

[4]Docket No. 316.

[5]Docket No. 340, at 3-4.

[6]Plaintiff attempts to avoid this rule by asserting that the Additional Elson Affidavit does not really "support" the summary judgment motion because it is merely provided for convenience to the Court, and does not provide additional evidence. Docket No. 349, at 11. However, the Court finds that Plaintiff's reading of the rule is too narrow as it overlooks the obvious fact that there would probably be no current dispute over the affidavit if it did not, in fact, support, at least in some manner, Plaintiff's Motion against Defendant.

scandalous matter."[7] Rule 12(f) is improperly relied upon by Defendants here because: first, it only applies to pleadings, not motions such as summary judgment; and second, the rule "is neither an authorized nor a proper way to . . . strike an opponent's affidavits."[8]

However, this leaves the Court with the question of how to deal with Plaintiff's untimely filed affidavit. The Court, therefore, turns to Plaintiff's Motion for Enlargement of Time.

II. *Plaintiff's Motion for Enlargement of Time*

Pursuant to Fed. R. Civ. P. 6(b)(2), Plaintiff moves this Court to extend the time allowed to file the Additional Elson Affidavit from May 19, 2006, the date the Plaintiff's summary judgment motion was submitted, to June 19, 2006, the date the Additional Erson Affidavit was filed.[9]

Rule 6(b)(2) allows for enlargement of time "upon motion made after the expiration of the specified period . . . where the failure to act was the result of excusable neglect."[10] "Whether a party's neglect is excusable 'is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission.'"[11] "Such circumstances include '[1] the danger of prejudice to the [nonmoving party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable

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[7]Fed. R. Civ. P. 12(f).

[8]5C C.Wright and Miller, *Federal Practice and Procedure*, § 1380.

[9]Docket No. 347, at 2.

[10]Fed. R. Civ. P. 6(b)(2).

[11]*United States v. Torres*, 372 F.3d 1159, 1162 (10th Cir. 2004) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)).

control of the movant, and [4] whether the movant acted in good faith.'"[12] Of these factors, "fault in the delay [is] perhaps the most important single factor . . . in determining whether neglect is excusable."[13] These factors are addressed in turn.

As to the first factor, Plaintiff argues that the Additional Elson Affidavit provided nothing new in this case beyond that which is already on the record, and that, in any case, it was submitted before Defendants' response was due.[14] Defendants state that the Additional Elson Affidavit was submitted "just before" their response was due.[15] This Court agrees with Plaintiff. Defendants submitted their response to Plaintiff's summary judgment motion on June 21, 2006.[16] Plaintiffs submission of the affidavit two days prior to when Defendant submitted its response provided sufficient time to either address the affidavit, which does not introduce novel issues, in the response, or file a motion for extension of time. Accordingly, this factor weighs in favor of extension.

Second, Plaintiff does not directly address the length of the delay, but argues that, as the summary judgment hearing is scheduled for October 23, 2006, the filing of the Additional Elson Affidavit does not adversely impact the judicial proceedings.[17] Defendants emphasize that Plaintiff delayed filing the affidavit for one month after it was due, and that this is significant

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[12]*Id.*

[13]*Id.* at 1163 (quotation and citation omitted).

[14]Docket No. 349, at 12-13.

[15]Docket No. 340, at 5.

[16]Docket No. 334.

[17]Docket No. 349, at 13.

because it corresponded to the time Defendants were given to respond to Plaintiff's motion.[18] Although Plaintiff's filing was fully one month after the underlying deadline, Plaintiff is correct in noting that the delay does not greatly affect the judicial proceedings here. The Court finds that this factor is inconclusive.

Third, as to the reason for the delay, Plaintiff somewhat elusively asserts that the affidavit was simply not available earlier.[19] Plaintiff notes that "the parties were very busy during the time that plaintiff's motion was filed."[20] Considering Plaintiff's failure to elaborate, this Court must assume that, although filing the affidavit was within its grasp, Plaintiff determined that other matters were more pressing, and therefore took priority. In any case, it appears unlikely that Plaintiff had little or no control over the filing of the affidavit for the entire period of delay. Accordingly, the Court notes that this factor clearly weighs against extension.

Finally, as to whether he acted in good faith, Plaintiff argues that it did not intentionally delay submission of the affidavit; rather, it gave Defendants sufficient time to address the affidavit before the latters' response and oral argument on the Motion.[21] Defendants imply that the delay may have been deliberate.[22] The Court is not convinced that Plaintiff acted in bad faith. Therefore, this factor weighs in favor of extension.

Nonetheless, viewing the factors in their entirety, especially Plaintiff's explanation for the

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[18]Docket No. 340, at 6.

[19]Docket No. 349, at 13-14.

[20]*Id.* at 14.

[21]*Id.* at 14-15.

[22]Docket No. 340, at 7.

cause of the delayed filing of the supplemental affidavit, this Court finds that Plaintiff has not demonstrated excusable neglect. The Court will therefore deny Plaintiff's Motion. The Court will grant Defendant's Motion to Strike, not under Rule 12(f), but under Rule 6(d). It is therefore

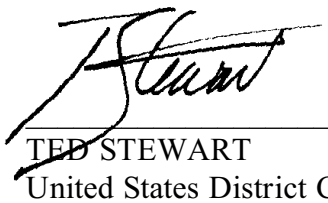
ORDERED that Plaintiff's Motion for Enlargement of Time to File Additional Affidavit of Edward Earl Elson (Docket No. 354) is DENIED. It is further

ORDERED that the Additional Affidavit of Edward Earl Elson be stricken pursuant to Fed. R. Civ. P. 6(d), because it was not filed with Plaintiff's Motion. Accordingly, it is

ORDERED that Defendants' Motion to Strike Additional Affidavit of Edward Earl Elson (Docket No. 339) is GRANTED pursuant to Fed. R. Civ. P. 6(d).

DATED September 20, 2006.

BY THE COURT:



TED STEWART
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

EDIZONE, LC, Plaintiff, v. CLOUD NINE, LLC, et al., Defendants.	MEMORANDUM DECISION AND ORDER CONSTRUING CLAIMS PURSUANT TO *MARKMAN* HEARING Case No. 1:04-CV-117 TS
CLOUD NINE, LLC, et al., Counter-Claim Plaintiffs, and Third-Party Plaintiffs, v. EDIZONE, LC, Counter-Claim Defendant, and TERRY PEARCE, et al., Third-Party Defendants.	

This matter comes before the Court for patent claim construction following a *Markman* hearing by the parties.[1] Plaintiff in this action asserts infringement of the following underlying claims against Defendant:

- claims 24 and 41 of Patent No. 5,994,450 ("the '450 patent"),
- claims 1, 5-6, 26-27, and 30 of Patent No. 5,749,111 ("the '111 patent"), and

[1]The parties submitted simultaneous briefs in connection with the hearing. Plaintiff's brief is found at Docket No. 355. Defendants' brief is at Docket No. 356.

- claims 1, 7, 9, 20-22, 24-25, 27-28, and 33 of Patent No. 6,026,527 ("the '527 patent).

The parties agree that the Court should construe the following key terms:

- "yieldable" as used in claim 33 of the '527 patent and claim 1 of the '111 patent
- "buckling" as used in claim 1 of the '111 patent and claims 1 and 33 of the '527 patent
- "monomer" as used in claims 24 and 41 of the '450 patent
- "tack modifier" (specifically whether it includes antioxidants when used in an amount less than three percent of the total product weight) as used in claim 41 of the '450 patent.

The Supreme Court, in *Markman v. Westview Instruments, Inc.*, held that claim construction is a matter exclusively within the province of the court.[2] Claim construction is the first step in an infringement analysis.[3] "It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history."[4] "In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence."[5] However, "[t]he court may, in its discretion, receive extrinsic evidence in order 'to aid the court in coming to a correct conclusion as to the true meaning of the language employed in the patent.'"[6]

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[2]517 U.S. 370, 372 (1996).

[3]*Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

[4]*Id*. "Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." *Id*.

[5]*Id*. at 1583.

[6]*Markman v. Westview*, 52 F.3d 967, 980 (Fed. Cir. 1995) (quoting *Seymour v. Osborne*, 78 U.S. 516, 546 (1871)).

The starting point is the claim wording itself.[7] As a general rule, claim terms are given their ordinary and accustomed meaning as understood by one of ordinary skill in the art.[8] "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. In such circumstances, general purpose dictionaries may be helpful,"[9] but the court should "start[] the decisionmaking process by reviewing the same resources as [would a person in that field of technology], *viz*, the patent specification and the prosecution history."[10]

As an exception to the general rule, a patentee may choose "to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history."[11] "Thus . . . it is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning."[12] Moreover, "the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best

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[7] *Dow Chem. Co. v. Sumitomo Chem. Co.*, 257 F.3d 1364, 1372 (Fed. Cir. 2001).

[8] *Id*.

[9] *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc). Importantly, such dictionaries constitute extrinsic evidence. *Markman*, 52 F.3d at 980 ("Extrinsic evidence consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.").

[10] *Phillips*, 415 F.3d at 1313.

[11] *Vitronics*, 90 F.3d at 1582.

[12] *Id*.

guide to the meaning of a disputed term."[13] "[Finally], the court may also consider the prosecution history of the patent, if in evidence."[14] Within this framework, then, the Court construes the terms in dispute.

I. *"Yieldable"*

As a preliminary matter, Plaintiff argues that construction of the term is only necessary as it relates to claim 1 of the '111 patent because, the term appears only in the preamble, but not the body of claim 33 of the '527 patent.[15] Moreover, Plaintiff states that "yieldable," as used in the '527 patent refers to an intended benefit of the invention, but not an explicit patent claim.[16] Defendants counter that Plaintiff is barred from so arguing because, under a current re-examination of the '527 patent before the United States Patent and Trademark Office ("USPTO"), Plaintiff is claiming that the term "yieldable" does constitute a claim within the patent.[17]

"[C]lear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art transforms the preamble into a claim limitation because such reliance indicates use of the preamble to define, in part the claimed invention."[18] Similarly, Plaintiff's reliance on

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[13] *Id.*

[14] *Id.* "The prosecution history . . . consists of the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent." *Phillips*, 415 F.3d at 1317. "Yet because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Id.*

[15] Docket No. 355, at 21-22.

[16] *Id.*

[17] Docket No. 356, at 8 n.9, Ex. I.

[18] *Catalina Mktg. Int'l Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002).

the preamble as a source to distinguish patents during its reexamination should also result in the preamble being construed as a claim limitation in this case. Defendants correctly point out that "claims may not be construed in one way in order to obtain their allowance and a different way against accused infringers."[19] The Court will therefore construe the term "yieldable" as used in both claim 1 of the '111 patent, and in the preamble of claim 33 of the '527 patent.

Plaintiff argues that the term "yieldable" as used in its patents means "able to give way under force or pressure."[20] Plaintiff emphasizes that the term should reflect the shape memory properties of the patented material.[21] Plaintiff points to the specifications in the '111 and '527 patents which state that "the cushioning element is yieldable as a result of compressibility" and that it "yields under the weight of the cushioned object."[22] On the other hand, Defendants argue that the term means "having a yield point."[23] Defendants support this interpretation by pointing to extrinsic evidence, namely, the Random House Webster's Unabridged Dictionary, and a technical manual, the Standard Terminology Relating to Rubber.[24]

The Court finds that, based upon the specifications, the term "yieldable" as used in Plaintiff's patents is more aptly construed as "able to give way under force or pressure." The Court is unconvinced that the extrinsic evidence proffered by Defendants provides the correct ordinary and accustomed meaning as understood by one of ordinary skill in the art. Rather,

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[19] *Spectrum Intern., Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1379 (Fed. Cir. 1998).

[20] Docket No. 355, at 23-28.

[21] *Id.* at 20.

[22] *Id.* at 23-24.

[23] Docket No. 356, at 8.

[24] *Id.* at 9.

given the use of the term in the specifications, and the intended nature of the invention, namely, to maintain shape memory, Plaintiff's definition properly encompasses the scope of the correct meaning. Defendants' proposed definition, on the other hand, incorporates one aspect of being yieldable, namely, able to pass a yield point, but fails to address the broader meaning inferred by a reading of the specifications.

II. *"Buckling"*

Plaintiff next argues that the proper construction of "buckling" is "the planned failure or collapse of a column wall resulting in redistribution or lessening of the load carried by the column."[25] Plaintiff points to the language of the '111 and '527 patents which states that "[b]uckled columns offer little resistance to deformation, thus removing pressure from the hip bone area."[26] Defendants rely on a Mechanics of Materials manual and the Random House dictionary to define "buckling" as "lateral bending of a portion of a column, or the change in primary loading of a portion of a column from axial compression to lateral bending."[27] Defendants also point to a Final Office Action by the USPTO in a Reexamination of Patent '111, in which the USPTO rejected Plaintiff's proposed definition of the term and noted that "the term buckling . . . is defined as bending."[28]

Again, the Court finds that Plaintiff's intrinsic evidence, rather than Defendants extrinsic evidence, provides the proper ordinary and accustomed meaning as understood by one of

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[25]Docket No. 355, at 28.

[26]*Id.*

[27]Defs.' *Markman* Ex. M, at M-12.

[28]*Id.*

ordinary skill in the art. Specifically, the Court notes that bending, as defined by Defendants, does not necessarily result in a lessening of a load as a person of ordinary skill in the art would understand Plaintiff's use of the term "buckling" upon a careful reading of Plaintiff's patents.

As to Defendants' intrinsic evidence, the Court notes that the USPTO's reexamination definition appears to be vague and overbroad. Defendants argued at the *Markman* hearing that one understood definition of buckling defines the term as *lateral* bending *of a portion of a column*. However, the USPTO states only that the term means "bending." This lack of clarity in the examination history, combined with the specification language describing buckled columns, leads the Court to accept Plaintiff's proferred definition.

III. *"Monomer"*

Plaintiff argues that the term "monomer" should be construed to mean small repeating units found within an already formed polymer.[29] At the hearing, Plaintiff clarified that it is arguing that it has acted as its own lexicographer in this instance, giving the term a meaning with which it is not normally associated. To support this argument, Plaintiff points to various sources of intrinsic evidence. First, a claim limitation in claim 24 of patent '450 states that "B is a . . . polymer including . . . monomers" and "weights of . . . monomers comprise about 50 weight percent of . . . polymer B."[30] Second, a claim limitation in claim 41 of '450 states that "B is a . . . polymer comprising a plurality of monomers."[31] Third, the definition of "polymerization" in the

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[29]Docket No. 355, at 11.

[30]*Id.*

[31]*Id*. at 11-12.

‘450 patent states that it is a process whereby monomers are connected to form a polymer.[32] Fourth, the specification in the ‘450 patent, which contains Figures 6a through 6d, illustrates what are called by Plaintiff monomers, only in reacted form, as they exist within a polymer.[33] Fifth, a narrative statement in the ‘450 patent states, with respect to a polymer used in all of Plaintiff’s products, that the “polymer . . . is made up of . . . monomers.”[34]

Defendants argue that the proper construction of the term “monomers” is “small molecules capable of reacting with like or unlike molecules to form a polymer.”[35] Defendants point to two sources of intrinsic evidence to support their proposed construction. First, like Plaintiff, Defendants point to the ‘450 patent specification which states that “monomers are connected in a chain-like fashion to form a polymer.”[36] Second, during the prosecution history of the ‘450 patent, the USPTO patent examiner stated that Plaintiff-defined monomers were not actually monomers in the sense that that term should be used.[37] Defendants also point to one source of extrinsic evidence, the Standard Terminology Relating to Rubber, to support their claimed construction.[38]

The Court believes that Plaintiff’s intrinsic evidence, as well as Defendants’ evidence from the prosecution history, support that Plaintiff acted as its own lexicographer with respect to

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[32] *Id.* at 12.

[33] *Id.* at 13-14.

[34] *Id.* at 15.

[35] Docket No. 356, at 10.

[36] *Id.*

[37] *Id.* at 10-11.

[38] *Id.* at 10.

this term. Collectively, the abovementioned limitations and specifications clearly state that Plaintiff referred to monomers as they existed within an already formed polymer, and not as unreacted molecules. This conclusion is supported by the fact that the USPTO, during the prosecution of the patent by Plaintiff, noted that the Plaintiff was using a rather unorthodox definition of the term. Additionally, the Court views Plaintiff's construction as correct because an adoption of Defendants' proposed definition, as it relates to this patent, would obviate Plaintiff's invention.[39]

IV. *"Tack Modifier"*

Plaintiff argues that the term "tack modifier," as used in its patents, should be construed so as to include antioxidants when used in an amount greater than .03 percent of the total weight of the final product.[40] To support this construction, Plaintiff uses several steps, based on intrinsic evidence. First, Plaintiff asserts that the antioxidants used in its product have two functions: a primary function of preventing degradation, and secondary function of modifying tack.[41] Next, Plaintiff points to language in the '450 patent stating that "the use of excess antioxidants reduces or eliminates tack."[42] Plaintiff then notes that the '450 patent specification has fourteen examples of mixtures to make their product, three of which have "very minor amounts" of

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[39]*See Modine Mfg. Co. v. U.S. Int'l Trade Comm'n*, 75 F.3d 1545, 1550 (Fed. Cir. 1996), *overruled on other grounds by Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 234 F.3d 558 (Fed. Cir. 2000) ("Indeed, a claim interpretation that would exclude the inventor's device is rarely the correct interpretation.").

[40]Docket No. 355, at 31.

[41]*Id.* at 30.

[42]*Id.* at 31.

antioxidants.[43] These minor amounts are roughly .03 percent of the total weight of the final product.[44] Plaintiff argues that these minor amounts must serve at least to prevent degradation, and therefore, that the amounts in "excess" as previously referred to, must be amounts over .03 percent.[45]

Defendants argue that the term "tack modifier," as used in Plaintiff's patents, should include antioxidants only when used in an amount greater than three percent of the total weight of the product.[46] Defendants note that the '450 patent states, immediately preceding the language relating to excess antioxidants, that

> the materials of the present invention include up to about three weight percent antioxidant . . . . When a combination of antioxidants is used, each may comprise up to about three weight percent. . . . In the presently most preferred embodiment of the present invention, the materials include 2.5 weight percent primary antioxidant and 2.5 weight percent secondary antioxidant. . . . Additional antioxidants may be added for severe processing conditions involving excessive heat or long duration at a high temperature.[47]

Accordingly, Defendants argue that the patent teaches that up to about three weight percent of any one antioxidant is normal usage, and any more than this must be what the patent refers to as "excess."

Looking to the claim language itself, as well as the context in which that language is used, this Court finds that the proper construction of the term "tack modifier" should include an antioxidant only when that antioxidant is used in an amount greater than three percent of the total

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[43] *Id.*

[44] *Id*.

[45] *Id.*

[46] Docket No. 356, at 11.

[47] *Id.* at 11-12.

weight of the product. The '450 patent addresses a seeming upper threshold of antioxidant amounts when it states that "each [antioxidant] may comprise up to about three weight percent."[48] Because the subsequent paragraph begins "the Applicant has unexpectedly found that the use of excess antioxidants reduces or eliminates tack,"[49] it follows that "excess" means amounts beyond those referred to in the upper threshold established in the preceding paragraph.

In comparison, Plaintiff's proposed construction is more attenuated, and illogical, as it essentially asks the Court to construe the terms in its patent to mean that any amount of antioxidants beyond "very minor amounts" must be "excess." Plaintiff seems to argue that because an amount of antioxidants equal to .03 percent of total product weight must serve the so-called primary antioxidant purpose of preventing degradation, this must somehow also be the bottom threshold at which the antioxidants begin to serve the alleged tack modifying function. However, the Court notes that there is no evidence within the patent terms that links prevention of degradation and tack modification in this manner. Therefore, acceptance of Plaintiff's proposed construction would require a substantial logical leap. Moreover, while Plaintiff argues that antioxidants are used in all of its products, nowhere does Plaintiff argue that its invention necessarily includes the excess antioxidant amounts necessary to serve a tack modifying function. To the contrary, the argument in Plaintiff's brief implies that at least some of its formulations exclude the amounts of antioxidants which would be necessary to modify tack. Accordingly, the Court will accept Defendants' proposed construction over Plaintiff's.

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[48] '450 Patent, at col. 26, ln. 43.

[49] *Id.* at lns. 53-55.

For the purposes of this litigation, it is therefore

ORDERED that the term "yieldable" as used in claim 33 of the '527 patent and claim 1 of the '111 patent is construed to mean "able to give way under force or pressure." It is further

ORDERED that the term "buckling" as used in claim 1 of the '111 patent and claims 1 and 33 of the '527 patent is construed to mean "the planned failure or collapse of a column wall resulting in redistribution or lessening of the load carried by the column." It is further

ORDERED that the term "monomer" as used in claims 24 and 41 of the '450 patent is construed to mean "small repeating units found within an already formed polymer." Finally, it is

ORDERED that the meaning of the term "tack modifier" as used in claim 41 of the '450 patent shall include antioxidants only when each is used in an amount greater than three percent of the total weight of the product.

DATED September 21, 2006.

BY THE COURT:

TED STEWART
United States District Court Judge

Brian S. King, #4610
Attorney at Law
336 South 300 East, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 532-1739
Facsimile: (801) 532-1936
brian@briansking.com

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JOSEPH ALLEN, Plaintiff, v. ALLIANT TECHSYSTEMS, INC., ALLIANT TECHSYSTEMS INC. WELFARE BENEFIT PLAN, and METLIFE GROUP, INC. dba METROPOLITAN LIFE INSURANCE COMPANY, Defendants.	:	Civil No. 1:05cv00068DAK **ORDER OF DISMISSAL WITH PREJUDICE**

Based on the stipulated motion of the parties and good cause appearing, it is hereby ordered that the above captioned matter is dismissed with prejudice, each party to bear its own costs.

DATED this 21st day of September, 2006.

Dale A. Kimball
U.S. District Court Judge

Approved as to form:

s/ James L. Barnett
James L. Barnett

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. STACY LYNN HARWOOD, Defendant.	ORDER DENYING DEFENDANT'S REQUEST FOR DISCOVERY Case No. 1:06-CR-64 TS

Defendant moves for discovery. Upon the Court's review of the entire record, it appears that the government's Statement of Discovery Policy, and First Certificate of Compliance have responded to Defendant's discovery requests. It is therefore

ORDERED that Defendant's Motion for Discovery (Docket No. 2) is DENIED as moot, without prejudice to renewal of the motion if there are specific items that Defendant requests that have not been produced.

DATED September 21, 2006.

BY THE COURT:

TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. STACY LYNN HARWOOD Defendant.	**ORDER RESETTING TRIAL** Case No. 1:06-CR-0064 TS Honorable Judge Ted Stewart

The Court, having granted Defendant's Motion to Continue Trial, it is therefore

ORDERED that a three-day jury trial commence on February 7, 2007 at 8:30 a.m.

DATED THIS 21st day of September, 2006.

TED STEWART
United States District Court Judge

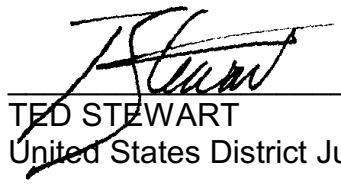
IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

TAMMY J. ABNER-TOWNSEND, Plaintiff, vs. JO ANNE B. BARNHART, Defendant.	ORDER STRIKING PLAINTIFF'S BRIEF AND RESCHEDULING BRIEFING Case No. 1:06-CV-04 TS

This matter is before the Court for consideration of Plaintiff's Brief. It is therefore ORDERED that Plaintiff's Brief, filed on June 19, 2006, is STRICKEN for failure to comply with page limitations set by the Scheduling Order. Plaintiff shall file a brief in compliance with the Scheduling Order no later than October 3, 2006. Defendant shall file its Response brief by October 31, 2006. Plaintiff may file an optional Reply by November 14, 2006. The hearing shall go forward as scheduled on November 30, 2006.

DATED September 21, 2006.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

* * * * * * * * *

FLYING J INC., et al.,	)	
	)	Civil No. 1:96-CV-0066J
Plaintiffs,	)	
	)	**ORDER WITHDRAWING**
vs.	)	**REFERENCE**
	)	
COMDATA NETWORK INC., et al.,	)	
	)	
Defendants.	)	

* * * * * * * * *

Based on this court's review of the record in the above-captioned proceeding,

IT IS ORDERED that the reference under 28 U.S.C. § 636(b)(2) by the Order of Reference dated March 7, 2005, is hereby withdrawn.

DATED this 15 day of September, 2006.

BY THE COURT:

Bruce S. Jenkins
United States Senior District Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION

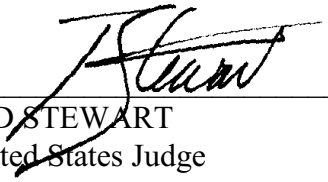
PHONE DIRECTORIES COMPANY, **Plaintiff,** **vs.** **KELLY CLARK, THE LOCAL PAGES,** **Defendants.**	**ORDER GRANTING PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE; ORDER TO SHOW CAUSE AND SETTING EVIDENTIARY HEARING** **Case No. 2:00-CV-468 TS**

This matter is before the Court on Plaintiff's Motion for An Order to Show Cause. Good cause appearing, it is

ORDERED that Plaintiffs' Motion for an Order to Show Cause (Docket No. 68) is GRANTED. It is further

ORDERED that Defendants shall appear at an evidentiary hearing on October 5, 2006, at 9:00 a.m. and show cause why they should not be held in contempt of court for violation of the Court's February 4, 2002 Permanent Injunction and Stipulated Judgment.

Dated this 20th day of September, 2006.

By 

TED STEWART
United States Judge

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Anderson Black

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)

Case Number: DUTX 2:02CR000067-001
USM Number: 09339-081
Deirdre Gorman
Defendant's Attorney

THE DEFENDANT:

☑ admitted guilt to violation of condition(s) 1,2,3 and 4 of the Petition of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1.	On 11/20/2005, the dft received a citation in Farmington, NM for Driving while Intoxicated.	
2.	On 11/20/2005, the dft did consume alcohol.	
3.	On 11/20/2005, the dft travel across the Utah State boundary	

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

4/27/2006
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Defendant's Residence Address:

Tena Campbell — U.S. District Judge
Name of Judge — Title of Judge

9-21-2006
Date

Defendant's Mailing Address:

DEFENDANT: Anderson Black
CASE NUMBER: DUTX 2:05CR000067-001

ADDITIONAL VIOLATIONS

Violation Number	Nature of Violation	Violation Concluded
3. (cont.)	into New Mexico without permissin from the USPO.	
4.	On 3/12/2006, the dft received a citation for Driving Under the Influence in Midvale, Utah.	

DEFENDANT: Anderson Black
CASE NUMBER: DUTX 2:05CR000067-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

12 Months

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Anderson Black
CASE NUMBER: DUTX 2:05CR000067-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment or be actively seeking full time employment, or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.

2. The defendant shall participate in alcohol aftercare treatment under a co-payment plan as directed by the USPO, such as the Indian Walk-In Center or Alcoholics Anonymous

3. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defer the costs of collection and testing. If deemed appropriate by the court and the probation office, the defendant will pay additional costs associataed with confirmation testing of positive results.

4. The defendant shall not use or possess alcohol. The defendant shall not go to bars, or be around alcohol.

5. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
John Kelly Black

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)

Case Number: DUTX 2:02CR000699-001K

USM Number: 10041-081

Mark Moffat
Defendant's Attorney

THE DEFENDANT:

☑ admitted guilt to violation of condition(s) 1 and 2 of the Petition of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1.	On 8/17/2006, a firearm was located in a common area of the defendant's residence.	
2.	On 8/17/2006, pornography was located on computers accessible to the defendant.	

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

9/18/2006
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Defendant's Residence Address:

Tena Campbell — U.S. District Judge
Name of Judge — Title of Judge

9-21-2006
Date

Defendant's Mailing Address:

DEFENDANT: John Kelly Black
CASE NUMBER: DUTX 2:02CR000699-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

5 Months

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant serve his sentence at a federal facility as closed to his residence as possible.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before 2 p.m. on 10/9/2006 .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: John Kelly Black
CASE NUMBER: DUTX 2:02CR000699-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

31 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☑ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: John Kelly Black
CASE NUMBER: DUTX 2:02CR000699-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not view or otherwise access pornography in any format.

2. The defendant shall not have unsupervised access to the internet. Computers in the defendant's home shall have password protection. The defendant shall not use the computer in his wife's office and without the wife present.

3. The defendant shall participate in mental health and/or sex-offender treatment program in a family setting, including group, individual and psycho-educational classes, specifically directed at pornography addiction, as directed by the USPO.

4. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

5. The defendant, convicted of a sexual offense, shall report the address where he will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex-offender in any state where he resides, is employed, carries a vocation or is a student.

SO ORDERED

TED STEWART
United States District Judge

Date 9/21/06

James D. Garrett, #6091
GARRETT & GARRETT
2091 East 1300 South, Suite 201
Salt Lake City, Utah 84108
Telephone: (801) 581-1144

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. DERIK BRITO, Defendant.	MOTION TO CONTINUE SENTENCING Case No.: 2:03CR00355TS Judge: TED STEWART

The Defendant, Derik Brito, by and through his counsel of record, James D. Garrett, hereby moves this Court for a continuance of the sentencing. This is based upon the following:

1. In the presentencing report submitted by United States Probation Officer Anrico Delray, Part D – Aggravating and Mitigating Factors that could affect a sentencing recommendation outside the applicable range of imprisonment, the officer reports none. However, during the investigation of this case, Derik Brito was examined by Dr. James L. Poulton. Dr. Poulton has been contacted and questioned whether or not the Defendant may suffer from mental illness that would make his compliance with the terms of supervised released impossible. In addition, Defendant's mother has been in contact with Anita Beck of one of the treatment centers referred to by the Defendant. Both professionals agree that Defendant may be

suffering from some sort of mental illness which would affect his compliance with supervised release.

WHEREFORE, the Defendant requests that the sentencing in this matter be continued and that counsel be allowed to speak with Dr. Poulton and his report updated for the Court.

DATED this ____ day of September, 2006.

_____

James D. Garrett
Counsel for the Defendant

CERTIFICATE OF MAILING

I hereby certify that on this ____ day of September, 2006, a true and correct copy of the foregoing MOTION TO CONTINUE SENTENCING was mailed, postage pre-paid to the following:

Wade Farraway
Assistant United States Attorney
185 South State Street #400
Salt Lake City, Utah 84111

Anrico Delray
United States Probation
350 South Main
Salt Lake City, Utah 84101

_____

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CURT RIDGEWAY, Plaintiff, vs. FLEET CREDIT CARD SERVICES, et al., Defendant.	MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION TO REVIEW CLERK'S TAXATION OF COSTS Case No. 2:03-CV-858 TS

Plaintiff moves for the review of the clerk's taxation of the costs of several depositions under § 1920.[1] Defendants prevailed on their summary judgment motions and submitted Bills of Costs. The Clerk of Court taxed costs in favor of Defendants, including costs of the depositions that the clerk found were necessary for trial preparation.[2] Plaintiff objects to the taxation of costs of depositions in favor of the Defendants on the ground that

[1]28 U.S.C. §1920.

[2]Docket No. 304 Taxation of Costs ("Deposition costs are allowed as meeting the test of necessity at the time the depositions were taken.").

Defendants have not adequately demonstrated that the deposition costs were reasonably necessary within the meaning of Tenth Circuit case law.

Having reviewed the entire record, the Court finds that the clerk of court applied the correct legal standard. "The general costs statute, 28 U.S.C. § 1920, permits recovery of deposition costs 'necessarily obtained for use in the case.' 'We have stated that this definition authorizes recovery of costs with respect to all depositions reasonably necessary to the litigation of the case.'"[3]

"A deposition is not obtained unnecessarily even if not strictly essential to the court's resolution of the case."[4] Although the fact that a deposition is used in connection with dispositive motions or trial is evidence that it was reasonably necessary, such actual use is not required if taking the deposition appeared reasonably necessary in light of the facts known to the parties at the time the expenses of the depositions were incurred.[5]

In the present case, the Court examines the record to determine if the depositions were reasonably necessary for use in the case at the time they were taken. At that time, of course, Defendants did not know if they would prevail in the summary judgment motions or in their Motions in Limine seeking to exclude testimony from some witnesses. The importance to the parties of the deponents' anticipated testimony if the trial went forward

---

[3] *Mitchell v. City of Moore, Okla.,* 218 F.3d 1190, 1204 (10th Cir. 2000) (quoting 28 U.S.C. § 1920(2), (4) and *Furr v. AT & T Technologies, Inc.,* 824 F.2d 1537, 1550 (10th Cir. 1987))

[4] *Furr,* 824 F.2d at 1550.

[5] *Callicrate v. Farmland Indus., Inc.*, 139 F.3d 1336, 1340-41 and n.9 (10th Cir. 1998).

is shown by the fact that Plaintiff listed all of the deponents as his "will call" witnesses at trial.[6]

Plaintiff himself designated pages of the deposition of deponent Strenk for use at trial.[7] Four of the disputed depositions involved anticipated testimony that Plaintiff deemed so important that he discussed it in his Trial Brief.[8] Deponents Teerlink, Larsen, Thompson and Darton are Plaintiff's experts. Defendants sought to exclude their testimony,[9] but if it were not excluded and trial had gone forward, it would have been necessary for Defendants to cross examine the experts at trial. Accordingly, depositions of these experts appeared to be necessarily obtained for use in the case at the time they were taken. Based upon the entire record, the Court finds that all of the depositions for which costs were taxed were reasonably necessary to the litigation at the time they were taken. It is therefore

[6]Docket No. 244, Joint Stipulation and Pretrial Order, at 6.

[7]*See* Docket No. 265, Pl.'s Ex. List re: Deposition testimony.

[8]Discussing expected testimony by Plaintiff, his wife, Teerlink, Strenk and Thompson.

[9]See Docket No. 271, Pl.'s Mem. in Opp. to Defendant's Motions in Limine to exclude testimony of Plaintiff's experts Thompson, Darton and Larsen and Docket No. 269 (same re: Teerlink as expert).

ORDERED that Plaintiff's Motion to Review Clerk's Taxation of Costs (Docket No. 305) is DENIED.

DATED September 21, 2006.

BY THE COURT:

TED STEWART
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNIVERSAL ENVIRONMENTAL ENERGY CORP., Plaintiff, vs. DONALD COX and CAPTIVE ENERGY, INC., Defendants.	MEMORANDUM DECISION AND ORDER GRANTING IN PART PLAINTIFF'S MOTION TO AWARD COSTS AND ATTORNEY'S FEES Case No. 2:03-CV-994 TS

Plaintiffs move for an award of costs and attorney fees. On May 8, 2005, the Court found Defendants to be in civil contempt and awarded Plaintiffs $30,000 in damages, plus attorney fees and costs incurred in connection with the contempt proceedings (Contempt Order [1]). On May 9, 2006, the clerk of court entered a judgment in accordance with the Contempt Order.[2]

Plaintiffs submit their Motion to Award Costs and Attorney Fees and support their Motion for $2,480.50 in attorney fees with an Affidavit. There is no request for, or

[1]Docket No. 32.

[2]Docket No. 33.

itemization of, any costs. Defendants have not filed a response to the Motion for an Award of Attorney Fees. The Court finds that the requested attorney fees are reasonable and were incurred in connection with the contempt proceedings. Accordingly, they will be awarded.

Plaintiff also requests that the Judgment be amended to add a paragraph providing that the Plaintiff be authorized to also recover costs and attorney fees incurred in the collection of the Judgment. The Court notes that a Motion to Award Attorney Fees is not the appropriate vehicle for a motion to alter or amend a judgment to add additional provisions.[3] Plaintiff's Motion does not cite to any authority for inclusion of such a provision. The Federal Rules of Civil Procedure do not appear to provide for inclusion of future costs of collection in a federal court judgment.[4] In the absence of any citation by Plaintiff to authority for adding such a provision after the Judgment has been entered, the Court will deny the request. Based upon the foregoing, it is therefore

ORDERED that Plaintiff's Motion to Award Costs and Attorney Fees is GRANTED in PART and attorney fees are awarded in the amount of $2,480.50. It is further

---

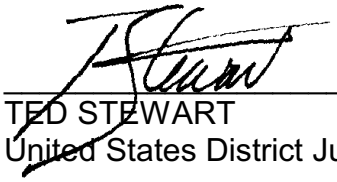
[3] *See* Fed.R.Civ.P. 59 and 60(a).

[4] *See* Fed. R. Civ. P. 54(d) and 58(c).

ORDERED that Plaintiff's Motion to Award Costs and Attorney Fees is DENIED to the extent that it requests alteration or amendment of the Judgment to add an entirely new paragraph awarding additional relief.

DATED September 21, 2006.

BY THE COURT:



TED STEWART
United States District Judge

Marcie E. Schaap #4660
Attorney at Law
Attorney for Plaintiff
1523 E. Spring Lane
Salt Lake City, UT 84117
(801) 201-1642
(801) 272-6350 (fax)
meschaap@3kingslaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ATWOOD	*	
	*	Case Number 2:03-CV-01014-TC
vs.	*	
	*	
SWIRE COCA-COLA, INC., et al.	*	PRETRIAL ORDER

This matter having come before the court on September 13, 2006, at a pretrial conference held before the Honorable Tena Campbell, pursuant to Fed. R. Civ. P. 16; and Marcie E. Schaap, having appeared as counsel for plaintiff, and Russell C. Fericks, having appeared as counsel for defendants, the following action was taken:

1. JURISDICTION. This is an action for breach of fiduciary duties under ERISA. Jurisdiction of the court is invoked under 29 U.S.C. § 1132(e)(1). The jurisdiction of the court is not disputed and is hereby determined to be present.

2. VENUE. Venue was determined by the court to be proper pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(c). Venue is laid in the Central Division of the District of Utah. *See 28 U.S.C. § 125.*

3. GENERAL NATURE OF THE CLAIMS OF THE PARTIES

(a) Plaintiff's claims: *The Defendants have breached their fiduciary duties under 29 U.S.C. § 1104 by failing to timely and properly enroll the Plaintiff in its Long-Term Disability (LTD) plan even though the Plaintiff requested enrollment on the date he was hired. Plaintiff should be "instated" into the LTD Plan.*

(b) Defendants' claims: *Defendants deny that they were in any way negligent with regard to presenting employee benefit information to plaintiff or in processing Mr. Atwood's choices and selections. Defendants affirmatively state that Plaintiff's damages, if any, were caused by his own negligence. Further: Defendants deny the appropriateness of the requested relief of "instatement" effective retroactively to a pre-injury date; they deny that the requested equitable relief can be appropriately converted to monetary damages; and they deny that an Order entered against them in this case, as it is currently postured, can have any binding effect on the Long Term Disability Plan insurer, UnumProvident.*

(c) All other parties' claims: *None*

4. UNCONTROVERTED FACTS. The following facts are established by admissions in the pleadings, by order pursuant to Fed. R. Civ. P. 56(d), or by stipulation of counsel:

1. Plaintiff, Scott B. Atwood ("Atwood" or "Plaintiff") is a natural person residing in the State of Utah.
2. Swire Coca-Cola, USA ("Swire") is/was the "Plan Administrator" of the Swire Coca-Cola, USA Long-Term Disability Plan (the "Plan"), as the term "Plan Administrator" is defined in 29 U.S.C. §1002(16)(A).
3. Unum Life Insurance Company of America ("Unum") was the insurer and claims administrator for the Plan.
4. The Plan is an employee benefit plan sponsored by Swire for its employees and their dependents.
5. The Plan is also an employee welfare benefits plan under 29 U.S.C. §1001 et. seq., the

Employee Retirement Income Security Act of 1974 ("ERISA").

6. Atwood was hired by Swire on August 28, 2000.

7. Atwood worked as a Fleet Mechanic for Swire.

8. At all times relevant to this action, Atwood was eligible for participation in the Plan through his employment with Swire.

9. Atwood signed an Insurance Enrollment form at Swire on August 28, 2000, in the office of his supervisor, Jerry Griffis.

10. "Wellness Coverage," under the Insurance Enrollment Form, included medical, dental, vision, prescription drugs, life, accidental death, and long-term disability coverage.

11. On October 24, 2000, Atwood attended a New Employee Orientation meeting at Swire.

12. On May 4, 2001, in a meeting with Ron Lewis, Swire's Benefits Administrator, Atwood attempted to change his Insurance Plan on the Enrollment Form from "Wellness Coverage" to "Partial Coverage".

13. "Partial Coverage" included life, accidental death & dismemberment, and long-term disability coverage.

14. On May 4, 2001, Ron Lewis wrote on Atwood's Insurance Enrollment form:

> **Employee came in and signed insurance paperwork. Not added in error. RRL.**

15. Atwood put a large "X" through the "Wellness Coverage" choice, wrote his initials next to it, and checked the box on his Insurance Enrollment form for "Partial Coverage," adding his initials and the date – 5/4/01 – to that choice.

16. Both the "Wellness Coverage" choice and the "Partial Coverage" choice included LTD benefits.

17. On May 4, 2001, Ron Lewis had Atwood sign two insurance enrollment cards: one for the Unum LTD coverage and one for the group insurance plan.

18. Late applicants for the Plan are required to submit an Evidence of Insurability ("EOI") to Unum for evaluation.

19. Atwood had surgery on his right wrist in May, 2001.

20. Swire did not begin deducting premiums for LTD coverage from Atwood's paychecks until

the pay date of June 15, 2001.

21. On May 19, 2003, his treating physician, Dr. Douglas T. Hutchinson, an Orthopaedic Hand Surgeon, indicated that Atwood would likely be out of work completely for 10 days because of an anticipated second surgery on his right wrist.

22. On May 22, 2003, Atwood had a second surgery on his right wrist for scaphoid nonunion and this surgery was to redo a scaphoid ORIF with vascularized bone graft and radial styloidectomy.

23. Atwood has not returned to work since May 21, 2003.

24. Despite Atwood's requests for LTD benefits, the Defendants and Unum have failed to pay his LTD benefits.

5. CONTESTED ISSUES OF FACT. The contested issues of fact remaining for decision are:

1. Whether insurance cards were attached to the Insurance Enrollment form which Atwood filled out on August 28, 2000.
2. Whether Atwood saw or received any insurance cards at the New Employee Orientation meeting on October 24, 2000.
3. Whether Atwood received from the Defendants, in a timely manner, the necessary forms that were required to enroll him in the LTD Plan.
4. Whether Ron Lewis admitted to Atwood that Swire had made an error in not enrolling him in the LTD Plan.
5. Whether the manner in which Atwood filled out the Insurance Enrollment form on August 28, 2000, constitutes an effective choice of Wellness Coverage that includes LTD benefits, or if it constitutes Atwood declining employee benefits altogether.
6. What is the meaning of Ron Lewis' note that Atwood was "not added in error" to the LTD Plan.
7. Whether and how on or about May 2, 2001, Atwood injured his right wrist.
8. Whether because of the pain and lack of motion in his right wrist, Atwood sought the advice

of a physician on or about May 4, 2001, for his wrist pain.

9. Whether Atwood's last day of work prior to his disability was May 21, 2003.

10. Whether on or about August 20, 2003, Atwood submitted his LTD claim to Unum.

11. Whether on September 26, 2003, Keith Owensby, Associate Customer Care Specialist for Unum, sent a letter to Atwood denying his claim for LTD benefits.

12. Whether, in its letter, Unum indicated that Atwood did not apply for coverage until May 4, 2001, and that was the basis for Unum considering him to be a "late applicant."

13. Whether Unum claimed that because it never received Atwood's EOI card, he was "not covered under this policy due to improper enrollment."

14. Whether Atwood was ever told by Swire that he needed to file an EOI card with Unum.

15. Whether Atwood's August 28, 2000, Insurance Enrollment form included a request that Swire enroll him in LTD coverage.

16. Whether Ron Lewis acknowledges that Atwood elected LTD coverage on August 28, 2000.

17. Whether Swire failed to properly enroll Atwood for LTD coverage with Unum within a reasonable time after having received his August 28, 2000, Insurance Enrollment form.

18. Whether Swire did not enroll Atwood for LTD coverage with Unum until May 4, 2001.

19. Whether Swire properly trained Ron Lewis or its other employees on how to properly enroll employees in the LTD Plan.

20. Whether Swire knew, or should have known, that Atwood's enrollment cards were missing on or shortly after his date of hire.

21. Whether Swire has any record of attempts it made to follow up with Atwood to collect enrollment cards personally from him.

22. Whether, at the time of Atwood's hire, and shortly thereafter, Swire had a sufficient system in place to follow up on missing enrollment cards.

23. Whether Swire could have sent the enrollment cards to Atwood for signature by interoffice mail.

24. Whether Swire sent the enrollment cards to Atwood for signature by interoffice mail.

25. Whether there was confusion because Atwood signed the Waiver of Insurance, but checked "no" on the same form and then elected insurance on the Insurance Enrollment side of the

paper.

26. Whether Swire should have followed up with Atwood to clear up any confusion, if it existed.
27. Whether Ron Lewis knew that an additional card (the EOI card) was required if LTD coverage was elected more than 120 days after hire.
28. Whether Ron Lewis properly learned about the EOI card required for late LTD enrollees until Atwood was denied coverage.
29. Whether Ron Lewis properly believed that Atwood was enrolled in the Plan on May 4, 2001.
30. Whether Swire informed Atwood about the EOI card.
31. Whether Swire had a pattern of accepting improper LTD enrollment cards.
32. Whether Atwood was remiss in not noticing the absence of payroll deductions for LTD coverage and other employee benefits before May 2001.

6. CONTESTED ISSUES OF LAW. The contested issues of law, in addition to those implicit in the foregoing issues of fact, are:

1. Whether Swire is an ERISA fiduciary, as that term is defined in 29 U.S.C. § 1002(21)(A).
2. Whether the Plan is an ERISA fiduciary, as that term is defined in 29 U.S.C. § 1002(21)(A).
3. Whether the Defendants have breached their fiduciary duties under ERISA by not enrolling Atwood in the LTD Plan if he properly requested it on August 28, 2000.
4. Whether the Defendants have breached their fiduciary duties under ERISA by not following up to make sure that all requirements were met to properly enroll Atwood in the LTD Plan at the time of his hire.
5. Whether ERISA fiduciaries may be held personally liable for the value of the benefits due under the Plan which were not paid due to their breach of fiduciary duty.
6. Whether the actions of the Defendants constituted a failure to enroll Atwood in the LTD Plan and are a violation of ERISA and a breach of the Defendants' duties and obligations to the Plan and to Atwood.
7. Whether the actions of the Defendants have caused damage to Atwood in the form of denial of his claim for LTD benefits for failure to properly and timely enroll.

7. EXHIBITS.

(a) Exhibits to be offered by Plaintiff:

	Description	Date
1.	Swire Pacific 5500 Filing	9/2/93
2.	Swire Pacific Holdings, Inc. Long-Term Disability Plan	1/1/00
3.	Unum Group Insurance Policy	1/1/00
4.	Group LTD Claim Form	n/a
5.	Swire Coca-Cola Insurance Enrollment Form for Scott Atwood	8/28/00 & 5/4/01
6.	Swire Coca-Cola Waiver of Insurance and Insurance Ineligibility Form	8/28/00
7.	Personnel File Folder - Scott Atwood	8/28/00
8.	Form W-4	8/28/00
9.	Swire Coca-Cola Retirement Designation of Beneficiary	8/28/00
10.	Swire Coca-Cola Direct Deposit Enrollment/Change	8/28/00
11.	Swire Coca-Cola Employee Acknowledgment	8/28/00
12.	Swire Coca-Cola New Employee Checklist	8/28/00
13.	New Employee Orientation Roll	10/24/00
14.	Ron Lewis Business Card	n/a
15.	E-mail from Jerry Griffis to Tiffani Hollands	2/27/01
16.	Unum LTD Enrollment Card	5/4/01
17.	FMLA Certification of Health Care Provider	5/19/03
18.	Unum Long-Term Disability Physician's Statement	8/4/03
19.	Unum Long-Term Disability Employee's Statement	8/20/03
20.	Swire Coca-Cola Separation Report	8/25/03
21.	Unum Long-Term Disability Claim Job Analysis	9/4/03
22.	Unum Long-Term Disability Claim Employer's Statement	9/12/03
23.	Letter from Ron Lewis, Swire Coca-Cola, to Scott Atwood	9/12/03

24.	Letter from Ron Lewis, Swire Coca-Cola, to Scott Atwood	9/22/03
25.	Internal activity note from Unum	9/22/03
26.	Internal activity note from Unum	9/23/03
27.	Internal activity note from Unum	9/26/03
28.	Letter from UnumProvident to Scott Atwood	9/26/03
29.	Internal activity note from Unum	9/29/03
30.	Letter from Marcie E. Schaap to Swire Coca-Cola and Unum	10/7/03
31.	Internal activity note from Unum	10/10/03
32.	Internal activity note from Unum	10/13/03
33.	Letter from UnumProvident to Marcie E. Schaap	10/20/03

(b) Exhibits to be offered by Defendants:

A.	Swire Coca-Cola Earnings Statements	6/1/01 6/15/01 1/11/02
B.	Swire New Employee Power Point Orientation	
C.	Swire Employee Manual and Orientation Handouts	
D.	Swire Absence Report	5/6/03
E.	Swire Record-Change Card	9/22/03
F.	Swire's Monthly Add/Termination Schedules sent to Unum	8/00 to 1/01

(c) Exhibits of any third parties: None

(d) Exhibits received in evidence and placed in the custody of the clerk may be withdrawn from the clerk's office upon signing of receipts therefor by the respective parties offering them. The exhibits shall be returned to the clerk's office within a reasonable time and in the meantime shall be available for inspection at the request of other parties.

(e) Exhibits identified and offered that remain in the custody of the party offering them shall be made available for review by the offering party to any other party to the action that requests access to them in writing.

(f) Except as otherwise indicated, the authenticity of received exhibits has been stipulated but they have been received subject to objections, if any, by an opposing party at the trial as to their relevancy and materiality. If other exhibits are to be offered, the necessity for which reasonably cannot now be anticipated, they will be submitted to opposing counsel at least 2 days prior to trial.

8. WITNESSES.

(a) In the absence of reasonable notice to opposing counsel to the contrary:

(i) Plaintiff will call as witnesses:

A. Scott Atwood

B. Erika Atwood

C. Ron Lewis

(ii) Plaintiff may call as witnesses:

A. Tiffany (Hollands) Bowling

B. Jantz Perry

C. Julie Rogers

D. Allison Johnson

(iii) Plaintiff will use the following depositions:

A.	*Scott Atwood*	*4/21/04*
B.	*Erika Atwood*	*5/3/04*
C.	*Ron Lewis*	*6/10/04*

(b) In the absence of reasonable notice to opposing counsel to the contrary:

(i) Defendants will call as witnesses:

A. Suzanne Millias

B. Joyce Hawkins

(ii) Defendants may call as witnesses:

A. Any witnesses called by the Plaintiff

(iii) Defendants will use the following depositions:

A.	*Scott Atwood*	*4/21/04*
B.	*Erika Atwood*	*5/3/04*
C.	*Ron Lewis*	*6/10/04*

(c) In the event that witnesses other than those listed are to be called to testify at the trial, a statement of their names, addresses, and the general subject matter of their testimony will be served upon opposing counsel and filed with the court at least _2_ days prior to trial. This restriction shall not apply to rebuttal witnesses whose testimony, where required, cannot reasonably be anticipated before the time of trial.

9. REQUESTS FOR INSTRUCTIONS. If the case is to be tried before a jury, requests for instructions to the jury and special requests for voir dire examination of the jury shall be submitted to the court pursuant to DUCivR 51-1. Counsel may supplement requested instructions during trial on matters that could not reasonably be anticipated prior to trial.

10. AMENDMENTS TO PLEADINGS. There were no requests to amend pleadings.

11. DISCOVERY. Discovery has been completed.

12. TRIAL SETTING.

a. The case is set for trial without a jury on September 22, 2006, at 8:30 a.m. at Salt Lake City.

13. POSSIBILITY OF SETTLEMENT. Possibility of settlement is considered ___ good ___fair _X_poor.

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DATED this 20 day of September, 2006.

BY THE COURT

The Honorable Tena Campbell
United States District Judge

The foregoing proposed Pretrial Order is hereby adopted this 15th day of September, 2006 (prior to execution by the Court).

/s/ Marcie E. Schaap
Marcie E. Schaap
Attorney at Law
1523 E. Spring Lane
Salt Lake City, UT 84117
Counsel for Plaintiff

/s/ Russell C. Fericks
Russell C. Fericks
Richards, Brandt, Miller & Nelson
Key Bank Tower, Suite 700
50 South Main Street
Salt Lake City, UT 84110-2465
Counsel for Defendants

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA

V.

Travis Allen Valdez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX204CR000431-001

USM Number: 11639-081

Mary Corporon
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 2 of the Indictment.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1)	Possession of Cocaine with Intent to Distribute/Aiding and Abetting		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/18/2006
Date of Imposition of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball — U.S. District Judge
Name of Judge — Title of Judge

September 20, 2006
Date

DEFENDANT: Travis Allen Valdez
CASE NUMBER: DUTX204CR000431-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

21 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to a federal facility as close to Salt Lake City, Utah as possible to facilitate family visitation. The Court also recommends that this sentence run concurrently with any sentence imposed in case 051907531, Third District Court, Salt Lake City, UT.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Travis Allen Valdez
CASE NUMBER: DUTX204CR000431-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Travis Allen Valdez
CASE NUMBER: DUTX204CR000431-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to drug/alcohol testing as directed by the U. S. Probation Office and pay a one-time $115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the U. S. Probation Office and shall not possess or consume alcohol during the course of treatment.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the U. S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

3. The defendant shall not be a member of a gang nor associate with any known gang member.

4. The defendant shall not possess materials which give evidence of gang involvement or activity.

DEFENDANT: Travis Allen Valdez
CASE NUMBER: DUTX204CR000431-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Travis Allen Valdez
CASE NUMBER: DUTX204CR000431-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* *

DIANE MONETA FRITZ,) Case No. 2:04CV445

Plaintiff,)

vs.) O R D E R

SALT LAKE COUNTY JAIL et al.,)

Defendants.)

* *

Plaintiff, Diane Moneta Fritz, claiming that she is in imminent danger of serious physical injury, once again moves the court to reopen the above entitled case, which was closed over one and one-half years ago on March 15, 2005 for her failure to pay the filing fee in full pursuant to 28 U.S.C. § 1915(g).

Plaintiff may invoke the imminent danger exception to the § 1915(g) three strikes exception only to seek relief from a danger which is imminent at the time the complaint is filed. *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 314 (3rd Cir.), *cert. denied*, 533 U.S. 953 (2001). Here Plaintiff's Complaint was dismissed over one and one-half years ago. Her attempts to circumvent that requirement by alleging an incident which she claims occurred over a month ago is insufficient to trigger the exception. Allegations that an inmate has faced imminent danger or suffered harm in the past are insufficient to trigger the § 1915(g) exception. *See Abdul-Akbar*,

239 F.3d 307 (being sprayed once with pepper spray not imminent danger). Similarly, the Court is not persuaded that Plaintiff's claim of an infection on her ear, for which she was given antibiotics, satisfies the § 1915(g) exception such that the Court should reopen a case dismissed so long ago. Additionally, the Court takes judicial notice that Plaintiff, who is a prolific *in forma pauperis* filer, has filed no fewer than three separate civil rights complaints in recent months. She is certainly capable of seeking redress for any alleged ongoing harm by filing a new and timely complaint if she so desires.

IT IS THEREFORE ORDERED that Plaintiff's renewed Motion to Reopen this case is denied.

DATED this 20th day of September, 2006.

BY THE COURT:

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THEODORE A. DALESSI, Plaintiff, vs. GORDON LAHAYE, et. al., Defendants.	ORDER & MEMORANDUM DECISION Case No. 2:04 CV 503 TC

Theodore Dalessi filed this lawsuit against his former employer, Summit Financial Resources, L.P., and Summit's chief executive officer, Gordon LaHaye. Mr. Dalessi asserted various causes of action, including breach of contract, defamation, and intentional infliction of emotional distress. Summit quickly filed a counterclaim against Mr. Dalessi, essentially alleging that Mr. Dalessi had perpetrated fraud upon the company.

On the motion of Summit and Mr. LaHaye, the court dismissed all of Mr. Dalessi's causes of action except for his claim that Summit breached his employment contract. (See Order 1-2 (dkt. #11).) Now before the court is Summit's motion for summary judgment on Mr. Dalessi's breach of contract claim and on the bulk of its counterclaim against Mr. Dalessi. Mr. Dalessi concedes the material facts supporting Summit's claims against him and, therefore, Summit is entitled to summary judgment on its claims of fraud, civil conspiracy, breach of an employment agreement (including the covenant of good faith and fair dealing), and unjust enrichment. But as the record now stands, the court lacks sufficient information to enter a

damages award.

Background

Summit provides accounts-receivable financing to businesses. As part of its business, Summit employs "brokers" who attempt to attract borrowers to Summit. Additionally, Summit maintains relationships with third-party brokers who refer business to Summit. If an independent broker refers a borrower to Summit, that broker receives a referral commission based on a percentage of the money Summit makes off the transaction. Summit alleges that Mr. Dalessi impermissibly exploited Summit's practice of providing independent brokers with referral commissions and that he unjustly obtained financial benefit as a result of his actions.

At the time the alleged fraud took place, Mr. Dalessi was Summit's senior vice president and director of sales. As such, Mr. Dalessi was not eligible to receive referral commissions. Seeking to circumvent that prohibition, Mr. Dalessi contacted John Porter and proposed that they trick Summit into paying referral commissions on business that Mr. Dalessi generated as a Summit employee. The plan was simple. Mr. Dalessi falsely indicated that certain accounts had been referred to Summit by Mr. Porter. Summit would then pay Mr. Porter a commission. Mr. Porter, in turn, would provide Mr. Dalessi with 95% of the commission paid by Summit. The two men set up a company called Bridge Financial Services, LLC, and represented to Summit that Bridge Financial was Mr. Porter's company.

Summit maintains that it paid $67,442.03 in fraudulent commissions to Mr. Porter and Bridge Financial, and that Mr. Dalessi ultimately received $64,069.93 of that money. In relation to those losses, Summit has recovered $50,061.73 from Federal Insurance Company, $15,380.00 from Great American Insurance Group, and $10,000.00 from a settlement with Mr. Porter. These recoveries total $75,441.73.

Applicable Standard

Federal Rule of Civil Procedure 56 permits the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). The court must "examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment." Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990).

Analysis

Mr. Dalessi makes no attempt to refute Summit's substantive factual allegations. Rather, Mr. Dalessi (1) challenges the admissibility of the affidavit submitted by Mr. LaHaye in support of Summit's summary judgment motion, (2) asserts that his actions did not violate his employment agreement, and (3) claims that Summit suffered no harm as a result of his actions. Each of Mr. Dalessi's contentions lacks merit.

1. Affidavit of Mr. LaHaye

Mr. Dalessi argues that Mr. LaHaye's affidavit, which provides the evidentiary support for Summit's motion, is not based on personal knowledge. Mr. Dalessi is correct that Mr. LaHaye's affidavit provides little information about how he is aware of the facts to which he testifies. But a review of that affidavit establishes that Mr. LaHaye's knowledge can be inferred given his position at Summit. See Told v. Tig Premier Ins. Co., 149 Fed. Appx. 722, 725 (10th Cir. 2005) ("[G]enerally Rule 56(e)'s requirement of personal knowledge and competence to

testify may be inferred if it is clear from the context of the affidavit that the affiant is testifying from personal knowledge."). Accordingly, Mr. LaHaye's affidavit is admissible.

2. Employment Contract

Mr. Dalessi asserts that because his employment agreement failed to expressly prohibit his actions, Summit cannot recover on the basis of that agreement. Under Utah law, "[a]n implied covenant of good faith and fair dealing inheres in every contract." Eggett v. Wasatch Energy Corp., 94 P.3d 193, 197 (Utah 2004). "To comply with the obligation to perform a contract in good faith, the party's actions must be consistent with the agreed common purpose and justified expectations of the other party." Andalex Res., Inc. v. Myers, 871 P.2d 1041, 1047 (Utah Ct. App. 1994).

Mr. Dalessi admits that he was not entitled to receive referral commissions, it follows that any action taken by him to secure those commissions would be inconsistent with his employment agreement. This is the case even though Summit did not preemptively and expressly prohibit all of those actions in the parties' contractual agreement. Mr. Dalessi's actions were inconsistent with the implied covenant of good faith and fair dealing and resulted in a material breach of the parties' contract. See Carvel Corp. v. Diversified Mgt. Group, Inc., 930 F.2d 228, 231 (2d Cir. 1991) (violation of implied covenant of good faith and fair dealing can properly be considered a material breach). This material breach excused Summit from its obligations to perform under the contract. See Haynes Trane Serv. Agency, Inc. v. Am. Std., Inc., 51 Fed. Appx. 786, 795 (10th Cir. 2002) ("Fraud that is a prior material breach of a contract may be a viable affirmative defense to a breach of contract claim."); Orlob v. Wasatch Med. Mgt., 124 P.3d 269, 275 (Utah Ct. App. 2005) ("[O]ne party's breach excuses further performance by the non-breaching party if the breach is material."); Coalville v. Lundgren, 930 P.2d 1206, 1209 (Utah Ct. App. 1997)

("The law is well settled that a material breach by one party to a contract excuses further performance by the non-breaching party.").

Accordingly, Summit is entitled to summary judgment in its favor on its own breach of contract claims and is also entitled to summary judgment on Mr. Dalessi's claim that Summit breached the parties' agreement.

3. Summit Suffered Harm

Mr. Dalessi asserts that summary judgment in Summit's favor is inappropriate because Summit suffered no harm as a result of his actions. Mr. Dalessi argues that this is so because Summit received business and made money on the accounts for which he received referral commissions. But this argument wholly ignores that Summit was improperly deprived of the commission money it paid to Mr. Porter and Bridge Financial. Mr. Dalessi's claim that Summit suffered no harm is simply incorrect.

4. Damages to Summit

Summit concedes that it has already obtained recoveries from three separate parties. But by Summit's calculation, Mr. Dalessi is still liable to Summit in the amount of $11,090.42. Summit also requests recovery of attorney fees and the imposition of punitive damages. While it is apparent from the record that Summit is entitled to summary judgment on its claims of fraud, civil conspiracy, breach of an employment agreement (including the covenant of good faith and fair dealing), and unjust enrichment, the record is unclear concerning the total amount of recovery to which Summit is entitled.

Accordingly, the court declines to enter a damages award until such time as the record is adequately supplemented by the parties. Critical to the resolution of this issue will be substantiation of Summit's damages calculation, the legal authority upon which Summit bases its

claim for attorney fees, the amount of those fees, and all information relevant to the imposition and determination of punitive damages.

Conclusion

The undisputed facts establish that Summit is entitled to summary judgment on its claims of fraud, civil conspiracy, breach of an employment agreement (including the covenant of good faith and fair dealing), and unjust enrichment. Further, Summit is entitled to summary judgment on Mr. Dalessi's claim that Summit violated the parties' employment agreement because Mr. Dalessi's own material breach excused Summit's performance. Given the uncertain state of the record, however, the court declines to enter a damages award at this time. Summit Financial Resources, L.P.'s Motion for Partial Summary Judgment Against Theodore A. Dalessi (dkt. #85) is GRANTED in part and DENIED in part. The liability of Mr. Dalessi to Summit is established, but no damages are awarded until such time as the record is supplemented as outlined above.

DATED this 20th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

ROBERT JOSEPH PILGRIM, **Plaintiff,** **v.** **ARIZONA DEPARTMENT OF CORRECTIONS,** **Defendant.**	**ORDER** **Case No. 2:04CV590 DAK**

This matter is before the court on Plaintiff's Petition for Transcripts of Proceedings and Motion for Case Retrieval. There are no transcripts related to this proceeding. Plaintiff's action was dismissed on November 10, 2004 for failure to comply with the Order to Show Cause. Therefore, Plaintiff's motions [docket nos.15 & 16] are DENIED.

DATED this 20th day of September, 2006.

BY THE COURT:

Dale A. Kimball

DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BRIAN L. ROBERTS **Plaintiff,** **v.** **SONY CORPORATION et al.,** **Defendants.**	**ORDER GRANTING EXTENSION OF TIME** **Case No. 2:04cv673** **Judge Ted Stewart** **Magistrate Paul M. Warner**

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Ted Stewart pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court is Plaintiff Brain L. Roberts's ("Plaintiff") Motion for Extension of Time [docket no. 107] and Second Motion for Extension of Time [docket no. 108]. For good cause appearing, Plaintiff's motions are GRANTED, and it is ORDERED that Plaintiff has until and including September 22, 2006, to file an objection to the August 30, 2006 order.

DATED this 21st day of September, 2006.

BY THE COURT:

Paul M. Warner

PAUL M. WARNER
United States Magistrate Judge

Robert L. Stevens [3105]
Martha Knudson [8512]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Defendant
Key Bank Tower, Seventh Floor
50 South Main Street / P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000 / Fax No.: (801) 532-5506

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

PACIFIC FRONTIER, INC., a Nevada Corp., J&L DISTRIBUTING, INC., a Nevada Corp., EDMAN & SONS, INC. dba KIRBY OF UTAH and IDAHO, a Utah Corp., GPM, INC., a Utah Corp., DBL DISTRIBUTING, INC., a Utah Corp., GENEVA DISTRIBUTING, INC., a Utah Corp., REDWOOD DIVISION PRO CLUB 100%, INC., a California Corp.,

Plaintiffs,

vs.

CITY OF AMERICAN FORK, a municipal corp., TED BARRATT, in his official capacity as May of American Fork, TERRY FOX, in his official capacity as Police Chief of American Fork, MELANIE MARSH, in his official capacity as American Fork City Administrator, KEVIN BENNETT, in his official capacity as American Fork City Attorney, RICHARD COLBORN, in his official capacity as American Fork City Recorder, and JUEL BELMONT, KEITH BLAKE, TOM HUNTER, SHIRL LEBARON and RICK STORRS, in their official capacities as members of the American Fork City Council, Jane or John Does I-X,

Defendants.

ORDER OF DISMISSAL

Case No. 2:04CV00856 ~~DB~~ TC

Judge Tena Campbell

The Court, having reviewed the Stipulation between Plaintiffs and Defendants and Defendants' Motion to Dismiss, and good cause appearing therefore, it is hereby

ORDERED that Plaintiffs' claims against all Defendants are hereby dismissed, with prejudice, each side to bear their own costs.

DATED this 20 day of Sept, 2006.

BY THE COURT:

Honorable Tena Campbell
United States District Judge

APPROVED AS TO FORM:

CRAIG L. TAYLOR, P.C.

Craig L. Taylor
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 18 day of September, 2006, to the following:

Craig L. Taylor
CRAIG L. TAYLOR, P.C.
472 North Main Street
Kaysville, UT 84037
Attorneys for Plaintiffs

G:\EDSI\DOCS\16208\0034\I55375.WPD
Order of Dismissal

Mathew L. Lalli (6105)
Wade R. Budge (8482)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH,
CENTRAL DIVISION

C&P COAL CORPORATION, a Utah corporation,

Plaintiff,

vs.

CONSOLIDATION COAL COMPANY, CONSOL ENERGY, INC. and CNX LAND RESOURCES, INC., all Delaware corporations,

Defendants.

ORDER GRANTING *EX PARTE* APPLICATION FOR WITHDRAWAL OF COUNSEL

Case No. 2:04CV942

Honorable Judge Ted Stewart

Honorable Magistrate Judge Brooke Wells

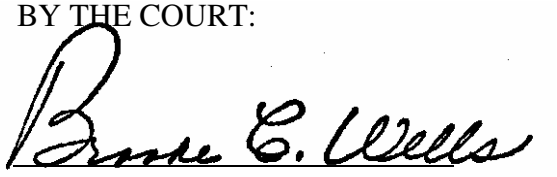
ON THIS DAY, the Court considered the *Ex Parte Application for Withdrawal of Counsel* (the "Application") submitted by counsel for Plaintiff, C&P Coal Corporation ("C&P"). After considering the Application, and pursuant to DuCivR 83-1.4(a)(3)(ii), the Court finds that the Application should be granted.

It is therefore,

ORDERED that Matthew L. Lalli and Wade R. Budge of Snell & Wilmer are permitted to withdraw as attorneys for C&P.

ENTERED on this 21st day of September 2006.

BY THE COURT:



Magistrate Judge Brooke Wells

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DOUGLAS TYLER WOODS, **Plaintiff,** **v.** **ADRIAN HILLIN, PHIL BARNEY, and TODD GARDNER,** **Defendants.**	**ORDER** **Case No. 2:04cv1011** **Judge Tena Campbell** **Magistrate Paul M. Warner**

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Tena Campbell pursuant to 28 U.S.C. § 636(b)(1)(B). Before the court is Plaintiff Douglas Tyler Woods's ("Plaintiff") (1) Motion to Proceed [docket no. 46], (2) Request for Order [docket no. 48], (3) Objection to Any Part of this Lawsuit to Take Place in Sevier County, Utah [docket no. 50], and (4) Motion to Set Date for Depositions [docket no. 54]. The court has carefully reviewed the memoranda submitted by the parties. Pursuant to Utah local rule 7-1(f), the court elects to determine the motions on the basis of the written memoranda and finds that oral argument would not be helpful or necessary. *See* DUCivR 7-1(f).

Plaintiff filed this complaint pursuant to 42 U.S.C. § 1983 against Defendants Adrian Hillin, a Sevier County Sheriff's Deputy; Phil Barney, the Sevier County Sheriff; and Todd Gardner, an officer with the Richfield City Police Department (collectively "Defendants"). The complaint arises from a traffic stop and subsequent arrest of Plaintiff while he was traveling through Sevier County, Utah.

(1) Plaintiff's Motion to Proceed

In Plaintiff's Motion to Proceed, he alleges that Defendants have failed to respond to his interrogatories, and he requests that the court order Defendants to respond. However, Defendants mailed their answers to Plaintiff on July 7, 2006, as is evidenced by the Certificate of Service filed with the court. Furthermore, Defendants indicated in their memorandum in opposition to the instant motion that they would mail a second set of answers to Plaintiff. The court has no reason to believe this did not occur. Accordingly, Plaintiff's Motion to Proceed [docket no. 46] is moot, and accordingly, it is DENIED.

(2) Plaintiff's Request for Order[1]

Plaintiff again asserts that Defendants have failed to respond to Plaintiff's discovery requests and seeks an order requiring them to respond. However, as is evidenced by the Certificates of Service filed with the court,[2] Defendants have responded to Plaintiff's discovery requests.

Moreover, Plaintiff admits in his motion that he received Defendants' responses to at least one of his requests for production of documents. Specifically, Plaintiff states that "Defendants claim my request for Hillin's entire record of citing vehicles driving 66 MPH or 67 MPH in a 65 MPH zone . . . is vague. This couldn't be more clear and only a retard would think it is vague." Thus, while Defendants objected to Plaintiff's request, they nevertheless

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[1]While Plaintiff styled this pleading as a "Request for Order," the court will treat it as a motion to compel under rule 37 of the Federal Rules of Civil Procedure.

[2]*See* docket nos. 41, 43, and 45.

responded.[3] So it appears that what Plaintiff is actually contesting is that Defendants made any objections at all to his requests for production of documents and perhaps to Plaintiff's other discovery requests. However, under rules 33(b)(1), 34(b), and 36 of the Federal Rules of Civil Procedure, it is essential that both parties state any objections they may have in their responses to discovery requests. *See, e.g.*, Fed. R. Civ. P. 33(b)(1) ("Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.").

Furthermore, Plaintiff does not set forth any specific reasons why Defendants' responses to his discovery requests were inadequate. Accordingly, the court is unable to effectively address any specific objection. Based on the foregoing, Plaintiff's Request for Order [docket no. 48] is DENIED. Plaintiff may, however, renew his motion or file a separate motion to compel pursuant to rule 37 of the Federal Rules of Civil Procedure. Should Plaintiff chose to do so, he must refer to each discovery request by number and state with particularity why each of the specific

---

[3]The following is the full text of Plaintiff's Document Request No. 1 and Defendants' Response:

> **REQUEST NO. 1:** Hillin's entire record of citations given to people doing 66 or 67 MPH in a 65 MPH zone.
>
> **RESPONSE:** Defendants object to this Request as vague, overbroad, unlikely to lead to the discovery of admissible evidence and as requesting information protected by GRAMA. Without waiving such objections, Defendants respond as follows: Attached is one page showing the number of warnings issued by Deputy Hillin for speeding. Warnings, not citations, are given for those individuals exceeding the speed limit by 5 miles per hour or less. Therefore, there are no documents responsive to this Request.

responses is inadequate. Failure to do so will result in denial of the motion.

(3) Objection to Any Part of this Lawsuit to Take Place in Sevier County, Utah

Plaintiff has filed an Objection to Any Part of this Lawsuit to Take Place in Sevier County, Utah. Plaintiff apparently filed this objection in response to Defendants' proposed stipulation pursuant to rule 29 of the Federal Rules of Civil Procedure setting Richfield, Utah, as the location for taking Defendants' depositions. Based on Plaintiff's written response to Defendants' proposed stipulation, it is obvious that Plaintiff does not agree to having the depositions located in Richfield.

While there is no motion currently pending before the court regarding this matter because Plaintiff has only filed an "objection," the court directs the parties to rule 30(b)(1) of the Federal Rules of Civil Procedure. The rule provides that "[a] party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition. . . ." Thus, as a general rule, because Plaintiff is seeking the discovery, he may set the location for the depositions in the notice, subject to the power of the court to grant a protective order to Defendants under rule 26(c) of the Federal Rules of Civil Procedure designating a different location. The court notes, however, that because the court in which Plaintiff filed his action is located in Salt Lake City (Plaintiff's preferred location for depositions), Salt Lake City seems to be a reasonable location for conducting the depositions. It does not appear that traveling from Richfield to Salt Lake City would place an undue burden upon Defendants.

(4) Motion to Set Date for Depositions

Plaintiff filed this motion requesting that the court set a date for depositions anytime

between September 25 to 29 or October 9 to 20, 2006. On May 17, 2006, the district court held a status conference and ordered that depositions were to be completed by September 1, 2006. While there was some correspondence between the parties as to potential dates (and locations) for depositions, it appears that the depositions were not completed prior to September 1, 2006, because Plaintiff had filed his Objection to Any Part of this Lawsuit to Take Place in Sevier County, Utah. Accordingly, the court will treat the instant motion as a motion to extend the deadline for depositions.

Defendants assert that Plaintiff's motion is untimely because it was not filed until after the deadline for depositions had passed. But considering Plaintiff's status as a pro se litigant, the court will extend the deposition deadline until October 6, 2006. Accordingly, Plaintiff's motion [docket no. 54] is GRANTED, and the parties are ordered to complete all depositions by the above date. The court will not, however, set actual dates for the depositions. That is the responsibility of the Plaintiff to notice up said depositions pursuant to rule 30(b) of the Federal Rules of Civil Procedure; and, to act responsibly in doing so by contacting Defendants' counsel to find a mutually agreeable time to take the depositions. Because the dispositive motion deadline is set for November 1, 2006, no further extensions of the deposition deadline will be granted.

DATED this 21st day of September, 2006.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

EXECUTIVE RISK INDEMNITY, INC., Plaintiff, vs. CAMERON J. LEWIS, et al., Defendants.	ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL Case No. 2:04-cv-01115

On September 14, 2006, Loren E. Weiss, Jessica Stengel, and Van Cott, Bagley, Cornwall & McCarthy requested to withdraw as counsel for Defendant J. Tyron Lewis. In their motion, Mr. Lewis' attorneys made the requisite showing of client consent and good cause to justify withdrawal.[1] However, on September 11, 2006, the court scheduled the matter for a five day jury trial to begin on September 10, 2007.[2] To ensure Mr. Lewis will not be left behind in this fully-involved case, the court directs Mr. Weiss to send a copy of this order to Mr. Lewis.

Mr. Lewis is advised he shall have thirty (30) days from the date of this order in which to file an entry of appearance by substitute counsel or an entry of intent to proceed *pro se* in this

[1]*See* DUCivR 83-1.4.

[2]Docket No. 126.

matter.

The court, therefore, GRANTS the Ex-Parte Application to Withdraw [#127].

DATED this 21st day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

DREW BRINEY #9295
Attorney at Law, LLC
Attorney for Defendants & Counterclaimants
265 North Main Street #100
Spanish Fork, Utah 84660
Phone: 801-798-8201
Facsimile: 801-798-8202

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RICHARDSON VAN LEEUWEN CONSTRUCTION COMPANY, LLC, Plaintiff and Counterclaim Defendant, v. BOX B, LLC and SHANNON TRACY, Defendants and Counterclaimants.	**ORDER OF DISMISSAL OF PORTIONS OF COUNTERCLAIMANTS' FIRST CAUSE OF ACTION AND COUNTERCLAIMANTS' SECOND CAUSE OF ACTION** Civil No: 2:04 cv 01192 TC Judge Tena Campbell

Pursuant to the parties' Stipulation and Motion for Order of Dismissal of Portions of Counterclaimants' First Cause of Action and Counterclaimants' Second Cause of Action, and good cause appearing, it is HEREBY ORDERED THAT:

Counterclaimants' second cause of action entitled Interference With Contract is dismissed in its entirety and paragraphs 7, 9, 11, and 12 under the Counterclaimants' first cause of action entitled Multiple Breaches of Contract are hereby stricken from the record.

21 pc

Dated: September 19, 2006

BY THE COURT

HONORABLE TENA CAMPBELL
U.S. District Court Judge

APPROVED AS TO FORM:

Dated: September 19, 2006

Drew Briney, Attorney for Defendants

Dated: September 19, 2006

Dart, Adamson & Donovan

Debra Griffiths Handley, Attorney for Plaintiff

 (NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Rob Ellerston

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:05CR000067-001

USM Number: 06785-081

Larry N. Long
Defendant's Attorney

Date of Original Judgment: 9/12/2006
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☑ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☑ pleaded guilty to count(s) 1 and 2 Felony Information
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§1343	Wire Fraud		1 and 2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/12/2006
Date of Imposition of Judgment

Dee Benson
Signature of Judge

Dee Benson — U.S. District Judge
Name of Judge — Title of Judge

9/20/2006
Date

DEFENDANT: Rob Ellerston
CASE NUMBER: DUTX 2:05CR000067-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

33 months

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends a Federal Correctional Institution as close to Utah as possible, for family visitations.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before 2 p.m. on 10/4/2006 .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Rob Ellerston
CASE NUMBER: DUTX 2:05CR000067-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment or participate in academic or vocational development through out the term of supervision as deemed appropriate by the probation office.

2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the probation office.

3. The defendant shall provide the probation office access to all requested financial information.

4. The defendant shall abide by the following occupational restrictions: The defendant shall not have direct or indirect control over the assets or funds of others; the defendant shall not be involved in the probation, sale or solicitation of stocks or investment instruments and the defendant shall not be self employed.

DEFENDANT: Rob Ellerston
CASE NUMBER: DUTX 2:05CR000067-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$	$ 2,759,573.00

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
SEE ATTACHED SHEET			

TOTALS $ _____ $ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ *the interest requirement is waived for* ☐ *fine* ☐ *restitution.*

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Rob Ellerston
CASE NUMBER: DUTX 2:05CR000067-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☑ Lump sum payment of $ 200.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages __7___ - __15___
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. TONYA LEE MIMS, Defendant.	:	ORDER OF RECUSAL Case No. 2:05-CR-00222 DKW

I recuse myself in this criminal case, and ask that the appropriate reassignment card be drawn by the clerk's office.

Dated this 13th day of September, 2006.

BY THE COURT:

David K Winder

David K. Winder
Senior U.S. District Judge

Judge Dale A. Kimball
DECK TYPE: Criminal
DATE STAMP: 09/19/2006 @ 15:53:31
CASE NUMBER: 2:05CR00222 DAK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, -vs- TWILA LUJAN, Defendant.	**ORDER CONTINUING SENTENCING** Case No. 2:05CR00468DAK

Based on the motion filed by the defendant and good cause appearing;

IT IS HEREBY ORDERED that Sentencing set for September 20, 2006, is hereby continued without date, until the Court is contacted by counsel to set a date after the lab results are completed .

DATED this 21st day of September, 2006.

BY THE COURT:

Dale A. Kimball

DALE A. KIMBALL
United States District Court Judge

UNITED STATES DISTRICT COURT

CENTRAL DIVISION District of UTAH

UNITED STATES OF AMERICA
V.
GUSTAVO ARRENDONDO-CAMPOS

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 205CR000615-002

USM Number: 12828-081

Jon Williams
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 and 2 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1)	Possession with Intent to Distribute a Controlled Substance		1
18 U.S.C. § 924(c)	Possession of a Firearm in Furtherance of Drug Trafficking		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 3 of the Indictment ☑ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/19/2006
Date of Imposition of Judgment

Signature of Judge

Ted Stewart U. S. District Judge
Name of Judge Title of Judge

9/20/2006
Date

DEFENDANT: GUSTAVO ARRENDONDO-CAMPOS
CASE NUMBER: DUTX 205CR000615-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

87 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Incarceration in LOMPOC, CA to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: GUSTAVO ARRENDONDO-CAMPOS
CASE NUMBER: DUTX 205CR000615-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: GUSTAVO ARRENDONDO-CAMPOS
CASE NUMBER: DUTX 205CR000615-002

ADDITIONAL SUPERVISED RELEASE TERMS

1) The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: GUSTAVO ARRENDONDO-CAMPOS
CASE NUMBER: DUTX 205CR000615-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: GUSTAVO ARRENDONDO-CAMPOS
CASE NUMBER: DUTX 205CR000615-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 200.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,

which will be docketed

separately as a sealed

document

STEVEN B. KILLPACK, Federal Defender (#1808)
VIVIANA RAMIREZ, Assistant Federal Defender (#8349)
UTAH FEDERAL DEFENDER OFFICE
Attorneys for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Facsimile: (801) 524-4060

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MIGUEL VAZQUEZ, Defendant.	ORDER FOR PSYCHIATRIC EXAMINATION AND REPORT AS TO COMPETENCY AND INSANITY Case No. 2:05 CR-915 PGC

IT IS HEREBY ORDERED:

1. James L. Poulton, Ph.D, shall conduct a competency/insanity evaluation on defendant Miguel Vazquez the cost of which shall not exceed $3000.00 or 20 hours at $150/hour. Dr. Poulton guaranteed that the fee would not increase if both a competency and insanity evaluation are conducted.

2. That the United States Attorney's Office for the District of Utah shall pay for this evaluation to be conducted.

3. Pursuant to 18 U.S.C. § 3161(h)(1)(A), the time between the date of this order and the date of further proceedings in this case is hereby excluded from speedy trial computation.

DATED this 21st day of September, 2006.

PAUL G. CASSELL, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JEFFREY C. BERMANT, Plaintiff, vs. DAVID K. BROADBENT, ESQ., as RECEIVER for MERRILL SCOTT & ASSOCIATES, LTD., MERRILL SCOTT & ASSOCIATES, INC., PHOENIX OVERSEAS ADVISERS, LTD., GIBRALTER PERMANENTE ASSURANCE, LTD., and each of their respective SUBSIDIARIES and AFFILIATED ENTITIES, Defendant.	ORDER Civil No. 2:05 CV 466

It is hereby ordered that the Order and Referral to Settlement Conference Proceedings (dkt. #11) be withdrawn and that the referral for a settlement conference be terminated. Further, the Scheduling Order dated November 30, 2005, which was modified by orders entered on April 10, 2006, and May 30, 2006, is further modified by striking the Settlement Conference, which currently appears at line 7(d) of the Scheduling Order.

SO ORDERED this 21st day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JEFFREY VERNON MERKEY, Plaintiff, v. **BRUCE PERENS, et al.,** Defendants.	**ORDER MODIFYING REPORT & RECOMMENDATION** **Case No. 2:05cv521DAK**

This case was assigned to United States District Court Judge Dale A. Kimball, who then referred it to United States Magistrate Judge Paul Warner under 28 U.S.C. § 636(b)(1)(B). Plaintiff filed a motion for an order to show cause, a motion for default judgment as to Defendant Alan P. Petrofsky, and a motion to amend complaint for damages. On June 30, 2006, Magistrate Judge Warner issued a Report and Recommendation, recommending that: (1) Plaintiff's motions for default judgment be granted; (2) Petrofsky be ordered to remove the Novell Settlement Agreement from scofacts.org and any other websites owned by Petrofsky; and (3) Plaintiff's motion to amend complaint for damages be granted.

The Report and Recommendation notified the parties that any objection to the Report and Recommendation was required to be filed within ten days of receiving it. Petrofsky timely filed an objection to the Report and Recommendation. Petrofsky's objections state that the court lost jurisdiction over Merkey's claims when he filed his notice of dismissal, Merkey should be required to file a new action to assert his claims against Petrofsky for dissemination of the

confidential settlement agreement, he cannot be subject to the court's sealing order because it was directed to the Clerk of Court, and Merkey's own violations of his confidentiality obligations undermine his protests regarding the Settlement Agreement's public availability.

On July 28, 2006, Merkey filed a response to Petrofsky's Objections, and on August 9, 2006, Petrofsky filed a reply in support of his objections. The matter is fully briefed and the court has reviewed the file in this matter *de novo.*

Although Petrofsky asserts that he has responded in good faith to the court and Merkey in this case, he admits that he was personally served with a summons and the second amended complaint on December 8, 2005. Petrofsky did not participate in the case after he was served with the second amended complaint until he filed his objections to Magistrate Judge Warner's Report and Recommendation.

The court's docket indicates that Petrofksy was provided notice of this court's October 27, 2005 Order reopening the case to determine the issue of whether the court's order sealing the confidential settlement agreement (Exhibit 2) applied to third parties. He also received notice of Magistrate Judge Alba's November 28, 2005 Order requiring Merkey to comply with the Federal Rules of Civil Procedure, which specifically responded to Petrofsky's letter to the court that he had not been served properly. And, after he was properly served with the second amended complaint, Petrofsky was served with Merkey's Motion for Default Judgment. Petrofsky did not respond to either the second amended complaint or the motion for default judgment.

Magistrate Judge Warner correctly found Petrofsky in default for failing to respond to the Complaint and failing to respond to Merkey's motion for default judgment. Moreover, the local court rules provide that the failure to respond timely to a motion may result in the court's granting the motion without further notice. DUCivR 7-1(d).

Petrofsky's objection provides no explanation for his failure to respond to the second amended complaint or motion for default. Instead, he attacks the court's jurisdiction to reopen a case. The court does not find Petrofsky's objection with respect to the court's jurisdiction persuasive. The court has jurisdiction to reopen a case, and once a case is reopened a party must participate or risk a finding of default. Petrofksy should have opposed Merkey's motion for default on the grounds he asserts in his objections. Instead, he failed to respond.

The sole issue before the court in this re-opened matter, however, is whether third parties should be prohibited from disseminating the confidential settlement agreement. Although Petrofksy argues that he cannot be prohibited from such dissemination, the court has jurisdiction to determine whether a party to the action can disseminate confidential information that has been filed in connection with the case. This court's October 27, 2005 Order reopening the case made clear that the case was being re-opened for a determination of whether the court's previous order sealing the confidential settlement agreement should apply to third parties. Because of Petrofsky's failure to participate in this litigation since the case was reopened, Magistrate Judge Warner was unable to address the merits of the issue regarding dissemination of the confidential settlement agreement in his Report and Recommendation. In his objections, however, Petrofsky argues that he obtained the confidential document lawfully and Merkey himself has made the document public. Nobody disputes the fact that he obtained a copy of the document while it was publicly available on the court's electronic docket. However, it is also undisputed that the document was erroneously on the court's electronic docket. The court finds that Petrofsky offers no persuasive reason for making the confidential settlement agreement available to the public. The court, therefore, orders Petrofsky to cease dissemination and/or publication of the confidential settlement agreement on scofacts.org and any other website he owns or with which

he affiliates.

Because the court recognizes that the issue of whether the sealing order applies to third parties has not been addressed on the merits, it also concludes that Petrofsky should not be liable for any damages that may have resulted from actions prior to the date of this Order. The court concludes that Merkey's motion to amend his complaint for damages is inappropriate and unnecessary. The court reopened the case solely for a determination of whether the court's sealing order should apply to third parties. Although the court concludes that Petrofsky should discontinue his dissemination and/or publication of the confidential settlement agreement, the court does not find that he was bound by the court's previous order. The court has previously indicated that the original order to place the settlement agreement under seal applied only to the Clerk of Court. Therefore, Merkey's request to amend his complaint to seek damages with respect to Petrofsky's prior conduct is denied. The purpose for reopening this case has been addressed and there is no further need for the case to remain open. Therefore, the court closes the case. If Petrofsky violates this court's order with respect to publication and dissemination of the confidential settlement agreement, Merkey must file a new, separate action for the resulting damages.

Accordingly, the court modifies Magistrate Judge Warner's Report and Recommendation as discussed above. The clerk of court is directed to close this case, each party to bear his own fees and costs.

DATED this 21st day of September, 2006.

BY THE COURT:

Dale A. Kimball

DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

OLD STANDARD LIFE INSURANCE COMPANY IN REHABILITATION, et al., Plaintiffs, vs. DUCKHUNT FAMILY LIMITED PARTNERSHIP, a Nevada limited partnership, Defendant.	ORDER GRANTING JOINT MOTION TO EXTEND TIME TO RESPOND TO THIRD PARTY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT Case No. 2:05cv00536

The parties, Defendant / Counterclaim Plaintiff Duckhunt Family Limited Partnership and Third Party Defendant, Lawyers Title Insurance Company have filed a Stipulation and Joint Motion to Extend Time to Respond to Third Party Defendant Lawyers Title Insurance Corporation's Motion for Summary Judgment. Based on the stipulation and for good cause appearing, the court GRANTS the stipulated motion [#116].

Duckhunt has until September 25, 2006, to respond to Lawyers Title Insurance Corporation's Motion for Summary Judgment.

DATED this 21st day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FRED E. SWINK, Plaintiff, vs. UTAH TRANSIT AUTHORITY, Defendant.	ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE DISPOSITIVE MOTIONS Case No. 2:05-cv-00676

The defendant, Utah Transit Authority, has moved for a two-week extension of time in which to file dispositive motions in this case. Based on the cause shown and UTA's representation that Mr. Fred Swink has no objection to this motion, the court GRANTS the motion [#16]. The parties must file dispositive motions in this case on or before October 9, 2006. The court expects both parties will move rapidly with regard to such motions and responses, as the court intends to hold to the scheduled trial date.

DATED this 21st day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* *

WILLIAM F. DIXON,	)	Case No. 2:05CV746
Plaintiff,	)	
vs.	)	MEMORANDUM DECISION
JO ANNE B. BARNHART, in her capacity as Commissioner of the Social Security Administration,	)	
	)	
Defendant.	)	

* *

I. INTRODUCTION

This matter is before the Court on Plaintiff William Dixon's brief seeking judicial review of the decision of Defendant Jo Anne B. Barnhart, Commissioner of Social Security, denying his claim for Disability Insurance Benefits, pursuant to 42 U.S.C. § 405(g). The Court has also received and reviewed Defendant's answer brief supporting the Commissioner's decision. After hearing oral argument, the Court is prepared to issue the following decision.

II. ADMINISTRATIVE PROCEEDINGS

On May 8, 2002, Mr. Dixon injured his right shoulder at work. On June 4, 2002, surgery was performed to repair his rotator cuff and biceps tendon. In November 2002, Mr. Dixon applied for Disability Insurance Benefits, alleging an inability to work since May 23, 2002, due to his shoulder injury, diabetes, depression, and hearing loss. His application was denied in initial and reconsideration determinations. Plaintiff requested a hearing before an Administrative

Law Judge ("ALJ"), which was held on August 19, 2004. The ALJ issued a decision on April 15, 2005, finding that although Mr. Dixon suffers from pain and other limitations associated with his impairments, this does not prevent him from completing a full workday and/or all work activity. The ALJ also found that Mr. Dixon could return to his past relevant work as a manager of iron workers, a light/skilled job; and a project director over maintenance, a light/skilled job, as previously performed and as generally performed in the national economy. The ALJ concluded that Mr. Dixon was not disabled as defined by the Social Security Act.

Mr. Dixon requested review of the ALJ's decision by the Appeals Council. The Appeals Council denied the request for review, so the ALJ's decision became the Commissioner's "final decision" under 42 U.S.C. § 405(g). Mr. Dixon then brought the instant action, seeking judicial review of the Commissioner's decision.

III. STANDARD OF REVIEW

The Court's review of the Commissioner's decision is limited. The court may not re-weigh the evidence or substitute its judgment for that of the ALJ. *White v. Barnhart,* 287 F.3d 903, 905 (10th Cir. 2002). *See also, Hamilton v. Sec'y of Health & Human Serv.,* 961 F.2d 1495, 1498 (10th Cir. 1992). However, the court should examine the record carefully and review it in its entirety. *See Musgrave v. Sullivan,* 966 F.2d 1371, 1374 (10th Cir. 1992). The court reviews the Commissioner's decision to evaluate whether the record contains substantial evidence to support the findings, and to determine whether the correct legal standards were applied. *Pacheco v. Sullivan*, 931 F.2d 695, 696 (10th Cir. 1991). *Hamilton,* at 1497-98. Substantial evidence is defined as, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389 (1971). However, evidence is not substantial

if it is overwhelmed by other evidence or if it constitutes mere conclusion. *O'Dell v. Shalala,* 44 F.3d 855, 858 (10th Cir. 1994). The court must review the record as a whole to determine if substantial evidence supports the Commissioner's final decision. *Washington v. Shalala,* 37 F.3d 1437, 1439 (10th Cir. 1994). However, where evidence as a whole can support either the agency's decision or an award of previously denied benefits, the agency's decision must be affirmed. *Ellison v. Sullivan*, 929 F.2d 534, 536 (10th Cir. 1990).

A disability is defined in the Social Security Act as "the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d)(1)(A)(Supp. 2002). The Act goes on to state that a benefit applicant shall only be found disabled where "his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work." 42 U.S.C. § 423(d)(2)(A).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is "disabled" for the purpose of awarding disability benefits. *Gossett v. Bowen*, 862 F.2d 802, 805 (10th Cir. 1988); 20 C.F.R. §§ 404.1520, 416.920. The first step is to decide whether the claimant is currently engaged in "substantial gainful employment." If the claimant is gainfully employed, he is not disabled, regardless of his medical condition, age, education, and work experience, and his application will be denied. If the applicant is not gainfully employed the evaluation will move to the second step.

The second step is to determine if the claimant has an impairment or combination of impairments that are severe enough to limit his or her ability to perform work activities. This step of the evaluation is based on medical factors alone. If the claimant is found not to have a severe impairment, the claim is denied and the evaluation comes to an end. If it is determined that the claimant does suffer from a "severe impairment," the evaluation will move to the third step.

The third step is to decide whether the impairments meet or equal one of the listed impairments that the Commissioner acknowledges are so severe as to preclude substantial gainful activity. If the impairment is listed in Appendix I of subpart P, 20 C.F.R. § 404, the claimant is presumed disabled and his claim is approved without further evaluation. Alternatively, if the impairment is not listed, but is determined to be equal to a listed impairment, the claim will be approved. If the impairment is not listed and not equal to a listed impairment, the evaluation process must continue.

The fourth step of the process requires the claimant's past relevant work to be analyzed. If the applicant's impairment does not prevent the performance of past relevant work, the claim will be denied. However, if the impairment is so severe that the applicant is unable to perform past relevant work, the analysis moves on to the final step.

In the fifth and final step of the evaluation process, the claimant will be deemed disabled and his claim will be granted unless it can be established that the claimant retains the capacity to perform an alternate work activity and that this specific job exists in the national economy. At this point, if the Commissioner does not make the required showing, an award of disability benefits is proper. *Nielson v. Sullivan*, 992 F.2d 118, 122 (10th Cir. 1993).

If a claimant is determined to be disabled or not disabled at any step, the evaluation process ends there. *Sorenson v. Bowen*, 888 F.2d 706, 710 (10th Cir. 1989). The burden of proof is on the claimant through step four; then it shifts to the Commissioner. *See id.* (citing *Ray v. Bowen*, 865 F.2d 222, 224 (10th Cir. 1989)).

III. DISCUSSION

A. The ALJ's Decision

In his April 15, 2005 decision, the ALJ found that Mr. Dixon was not disabled. At step one, the ALJ must determine if the claimant is engaged in substantial gainful employment. The ALJ found that Mr. Dixon had not performed substantial gainful activity since the onset if his alleged disability.

At step two, the ALJ must determine if the claimant's impairment or combination of impairments is severe. The ALJ in this case found that Mr. Dixon had the following severe impediments: right shoulder problems status post a rotator cuff repair, status post coccyx fracture, and diabetes mellitus.

At step three, the ALJ determined that Mr. Dixon's severe impairments did not meet or medically equal any of the impairments listed in Appendix 1 of Subpart P. The ALJ also found that Plaintiff's subjective complaints were not entirely credible. Finally, the ALJ found that Plaintiff retained the residual functional capacity to perfrom a reduced range of light work.

At step four, the ALJ found that Plaintiff's residual functional capacity did not prevent him from performing his past relevant work as a manager of iron workers and project director over maintenance. Having found that Mr. Dixon was able to perform past relevant work, the ALJ concluded he was not disabled and denied his claim without proceeding to step five.

B. The ALJ's Credibility Findings

The ALJ partially based his decision to deny disability benefits on Mr. Dixon's credibility. "Credibility determinations are peculiarly the province of the finder of fact, and we will not upset such determinations when supported by substantial evidence." *Kepler v. Chater,* 68 F.3d 387, 391 (10th Cir. 1995)(quoting *Diaz v. Secretary of Health & Human Services,* 898 F.2d 774, 777 (10th Cir. 1990)). However, if the ALJ disbelieves Plaintiff's allegations, he must explain what evidence led him to conclude the allegations were not credible. *Kepler*, at 391.

Mr. Dixon expressed concern in both his briefs and his oral argument that the ALJ did not find him credible. However, it is important to note that the purpose of the credibility finding in social security cases is to determine whether the plaintiff's allegation of injury is sufficient to allow the claim for benefits. In this case, the ALJ accepted most of Mr. Dixon's allegations of injury as being credible. In particular, the ALJ accepted as credible Mr. Dixon's allegations regarding his shoulder injuries and the resulting limitations. The only credibility question that the ALJ had was that Mr. Dixon maintained that his impairments were disabling and prevented him from working, yet he had testified to a near normal ability to perform all activities of daily living, including more strenuous chores such as cutting the lawn and doing yard work. Also, Mr. Dixon had testified that most of his ailments were treatable, with almost no medical side effects. The ALJ stated that although he "understands that the claimant suffers from pain and other limitations associated with these impairments," he could not find that "this prevents [Mr. Dixon] from completing a full workday and/or all work activity."

Because he accepted as credible Mr. Dixon's allegations of shoulder injury and resulting limitation, the ALJ adopted all restrictions from that injury in determining Mr. Dixon's residual

functional capacity. The ALJ found that there were jobs that Mr. Dixon could do, and had in fact done in the past (manager of iron workers and project director over maintenance). A vocational expert testified that these jobs are skilled, light or sedentary work.

This Court finds that there is sufficient evidence to support the Commissioner's final decision. As stated above, this Court may not re-weigh the evidence or substitute its judgment for that of the ALJ. If the Court finds that there was substantial evidence to support the agency's decision, then that decision must be affirmed.

C. Additional Evidence Submitted by Mr. Dixon During the Hearing

At the September 13, 2006 hearing on this appeal, Mr. Dixon, appearing *pro se,* submitted the following documents: (1) an audiology report dated May 4, 2005, which demonstrated hearing loss in both ears, and (2) a medical history summary dated September 10, 2006. As the defense points out in its brief, this Court may consider new evidence only if it is both new and material, and there is a good reason for the evidence not being presented earlier.

In this case, the medical history summary is not material because it was dated about 17 months after the ALJ's decision. Also, Mr. Dixon could have prepared and submitted the medical history summary and submitted it to the ALJ or the Appeals Council, and he has provided no good reason for not submitting it.

The May 2005 audiology report, dated about three weeks after the ALJ's April 2005 decision, could have been submitted to the Appeals Council in seeking review of the ALJ's decision. Again there is no good cause given for failing to present this evidence to the Commissioner. Therefore, the Court will not remand this case, because the new evidence is not material and Mr. Dixon did not offer good cause for failing to present it earlier.

IV. CONCLUSION

The Court recognizes that Mr. Dixon suffers from a number of painful and difficult medical problems. The Court sympathizes with him and found his testimony to be credible. However, this Court's review of the Commissioner's decision is limited; if there is substantial evidence to support that decision the Court is required by law to affirm.

For the foregoing reasons, the Commissioner's decision denying Mr. Dixon's claim is hereby affirmed.

DATED this 20th day of September 2006

BY THE COURT:

DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

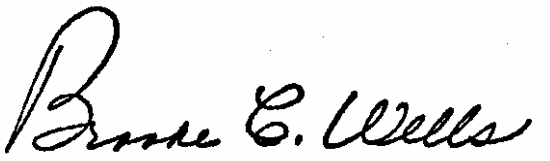
LEE ANN LUNT, Plaintiff, vs. METROPOLITAN LIFE INSURANCE COMPANY, Defendant.	Civil No. 2:05-CV-0784 ORDER SEALING METLIFE'S SUBMISSION OF ADMINISTRATIVE RECORD Judge Tena Campbell Magistrate Judge Brooke C. Wells

After review of Defendants' Motion to Seal MetLife's Submission of Administrative Record, the Court hereby:

ORDERS that MetLife's Submission of Administrative Record be filed under seal of the Court due to the fact that it may contain personal, confidential, medical or other sensitive information.

DATED this 21st day of September, 2006.

BY THE COURT:



Brooke C. Wells
U.S. Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on September 20, 2006, I electronically filed the foregoing proposed *ORDER SEALING METLIFE'S SUBMISSION OF ADMINISTRATIVE RECORD* with the Clerk of Court using CM/ECF system which sent notification of such filing to the following:

Loren M. Lambert, Esq.
Kirsten K. Sparks
Arrow Legal Solutions Group
266 East 7200 South
Midvale, UT 84047

/s/ Cheryl L. Newmark
Cheryl L. Newmark

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

MRSI INTERNATIONAL, INC., a Nevada Corporation, **Plaintiff,** **vs.** **BLUESPAN, INC., a Delaware Corporation,** **Defendant.**	**MEMORANDUM DECISION AND ORDER** **Case No. 2:05CV00896 DAK**

This matter is before the court on Plaintiff MRSI International, Inc.'s Motion to Dismiss or Strike Counterclaims of Defendant Bluespan, Inc. as contained in Defendant Bluespan, Inc.'s Original Answer and Counterclaims ("Answer and Counterclaims"). The court has determined that oral argument would not assist in deciding this motion, and thus the oral argument currently set for October 11, 2006 is vacated.

BACKGROUND

On October 28, 2005, MRSI International, Inc. ("MRSI") filed a Complaint against Bluespan, Inc. ("Bluespan") alleging infringement of United States Patent Numbers 6,084,517 ("517 patent") and 6,304,186 ("186 patent"). On May 18, 2006, Bluespan served its Answer and Counterclaims. In addition to denying MRSI's claims, Bluespan asserted a number of affirmative defenses. These include, but are not limited to, defenses that (a) "Bluespan has not

and does not infringe, contribute to the infringement of, or induce the infringement of the '517 or '186 patent," and (b) "[e]ach of the claims of the '517 and '186 patents is invalid for failure to satisfy the conditions of patentability set forth in Title 35, United States Code."

To protect its rights and ensure resolution of all disputes between the parties relating to the patents, Bluespan also asserted counterclaims for declaratory judgment on non-infringement and invalidity. Bluespan admits that the counterclaims are nearly identical to the two affirmative defenses listed above. Before answering Bluespan's counterclaims, MRSI timely filed this motion seeking to dismiss or strike Bluespan's counterclaims.

DISCUSSION

MRSI contends that Bluespan's counterclaims should be stricken because (1) the counterclaims duplicate the affirmative defenses within Bluespan's Answer, and (2) the counterclaims are "mirror images" of MRSI's claims. MRSI bases its motion on Rule 12 of the Federal Rules of Civil Procedure, which states that "the court may order stricken from any pleading . . . any redundant, immaterial, impertinent, or scandalous material." FED. R. OF CIV. P. 12(f). However, "motions to strike are not favored" and "[a]ny doubt as to the striking of a matter in a pleading should be resolved in favor of the pleading." *Gilbreath v. Phillips Petroleum Co.*, 526 F. Supp. 657, 658 (W.D. Okla. 1980). According to the Tenth Circuit, "[a] court should proceed with extreme caution in striking a pleading." *Colorado Milling & Elevator Co. v. Howbert*, 57 F.2d 769, 771 (10th Cir. 1932).

The Supreme Court has affirmed that in patent cases, "the issue of validity may be raised by a counterclaim in an infringement suit." *Altvater v. Freeman*, 319 U.S. 359, 363 (1943); *see*

also May v. Carriage, Inc., 688 F. Supp. 408, 414 (N.D. Ind. 1988); *Brunswick Corp. v. Outboard Marine Corp.*, 297 F. Supp. 373, 374 (E.D. Wisc. 1969); *Lackner Co. v. Quehl Sign Co.*, 145 F.2d 932, 934 (6th Cir. 1944). This is due in large part because "an alleged infringer is interested not only in being absolved of liability for any claimed infringement but also in having the court reach a determination regarding the validity of the patent in suit." *Brunswick Corp.*, 297 F. Supp. at 374. Because the possibility exists that a court will dispose of an infringement suit without going into the validity of the patents at issue, allowing a counterclaim for declaratory relief assures that a patent's validity will be determined regardless of the outcome of the infringement suit. *See id.* While the Supreme Court has emphasized that "[t]he requirements of case or controversy [in a countersuit] are of course no less strict under the Declaratory Judgment[] Act than in case of other suits." *Altvater*, 319 U.S. at 363, the Court has also stated that "there is, *necessarily*, a case or controversy adequate to support jurisdiction of a . . . counterclaim" if a party has actually been charged with patent infringement. *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 95 (1993); *accord Fort James Corp. v. Solo Cup Co.*, 412 F.3d 1340, 1348 (Fed. Cir. 2005)*; Qarbon v. eHelp*, 315 F. Supp. 2d 1046, 1050 (N.D. Cal. 2004); *Kudlacek v. DBC, Inc.*, 115 F. Supp. 2d 996, 1073 (N.D. Iowa 2000). Because MRSI has actually charged Bluespan with patent infringement, this court accordingly finds that Bluespan's counterclaims are viable under the Declaratory Judgment Act.

Rule 8(c) of the Federal Rules of Civil Procedure permits a court to treat a counterclaim as an affirmative defense "when a party has mistakenly designated a defense as a counterclaim." FED. R. OF CIV. P. 8(c); *see also Rayman v. Peoples Savings Corp.*, 735 F. Supp. 842, 851-53

(N.D. Ill. 1990) (denying defendants' motion for leave to file declaratory judgment counterclaim in a securities case because it was really an affirmative defense cast as a counterclaim). In patent infringement and validity cases, however, the Supreme Court has held that affirmative defenses are different than counterclaims and could have fundamentally different outcomes. *Cardinal Chem. Co.*, 508 U.S. at 93-94 ("[a]n unnecessary ruling on an affirmative defense is not the same as the necessary resolution of a counterclaim for a declaratory judgment"). The Court has explained that when invalidity is raised as a counterclaim, it must be adjudicated; however, if it is raised merely as an affirmative defense, such a ruling is unnecessary. *Id.*; *see also ABP Patent Holding v. Convergent Label Tech., Inc.*, 194 F. Supp. 2d 1257, 1270 (M.D. Fla. 2002) (declining to address merits of invalidity claim because it was raised only as an affirmative defense and not a counterclaim). Because the outcome of a patent claim can largely depend on whether it is formed as an affirmative defense or a counterclaim, the court finds that Rule 8(c) of the Federal Rules of Civil Procedure does not apply in this instance. Furthermore, because counterclaims are treated differently than affirmative defenses, MRSI's claim that Bluespan's counterclaims are "redundant" under Rule 12(f) of the Federal Rules of Civil Procedure is also without merit.

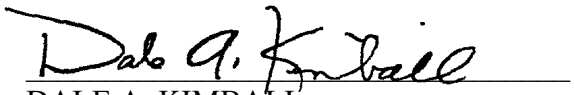
Finally, there is no indication that Bluespan's counterclaims will hinder or prejudice MRSI to any measurable degree. Because the issues presented by Bluespan's counterclaims are in line with those found within MRSI's Complaint, few judicial resources will be expended in assuring that all relevant claims are adjudicated. The court concludes that Bluespan's declaratory judgment counterclaims are a proper and appropriate method of assuring that the issues of patent infringement and validity are adjudicated in the most efficient manner possible.

CONCLUSION

For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED that Plaintiff MRSI's Motion to Dismiss or Strike Counterclaims is DENIED. The oral argument on this motion, currently scheduled for October 11, 2006 at 3:00 p.m. is VACATED.

DATED this 20th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDERSEN MANUFACTURING, INC., an Idaho Corporation Plaintiff, vs. DIVERSI-TECH, CORP., a Utah Corporation. Defendant.	Civil Action No.: 2:05 CV 00923 DB Judge Dee Benson **ORDER GRANTING STIPULATED EXTENSION OF TIME**

Upon motion of Plaintiff and stipulation of the parties,

IT IS ORDERED:

Plaintiff, Andersen Manufacturing, Inc. is granted a one-day extension of time, until Tuesday, September 19, 2006, in which to file its reply brief in support of its motion for reconsideration.

DATED this 20th day of September, 2006.

BY THE COURT

By: Dee Benson
HONORABLE DEE BENSON
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2006, the foregoing ORDER GRANTING STIPULATED EXTENSION OF TIME was electronically filed with the Clerk of the Court using the EC/ECF system, which sent notification of such filing to the following:

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Syracuse, New York 13202

s/ Margaret L. Carlson

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:

SIMON TRANSPORTATION SERVICES INC. and DICK SIMON TRUCKING, INC.,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Plaintiff,

v.

REGENCE BLUE CROSS BLUE SHIELD OF UTAH,

Defendant.

MEMORANDUM DECISION AND ORDER

Case No. 2:05CV924 DAK

This matter is before the court on the Official Committee of Unsecured Creditors' (the "Committee") appeal from a decision by the United States Bankruptcy Court for the District of Utah in Bankruptcy Case No. 02-22906 GEC. A hearing on the appeal was held on April 13, 2006. At the hearing, the appellant Committee was represented by Peter W. Billings. Regence Blue Cross Blue Shield of Utah ("Regence") was represented by Jerome Romero. Before the hearing, the court considered carefully the briefs and other materials submitted by the parties.

Since taking the matter under advisement, the court has further considered the law and facts relating to this appeal. Now being fully advised, the court renders the following Memorandum Decision and Order.

FACTUAL BACKGROUND

On or about August 1, 2000, Regence entered into an "Administrative Services Agreement" (the "Agreement") with Dick Simon Trucking, Inc. ("Simon"). Pursuant to the Agreement, Simon, as "employer" established a "self-insured, self-funded employee welfare benefit plan" (the "Plan") and contracted with Regence "to provide certain ministerial claims processing and related administrative services with respect to the Plan." Pursuant to the terms of the Plan, Regence served as the "Claims Administrator," providing the ministerial claim processing and related administrative services for eligible employees of Simon and their dependents. Regence provided "administrative claims payment services only" and did "not assume any financial risk or obligation with respect to claims."

As the Claims Administrator, Regence would process health care claims submitted by eligible Simon employees and their dependents under the Simon Benefits Plan, pay for those health care expenses, and then, on a weekly basis, submit an invoice to Simon for reimbursement of claims processed in the prior week. The underlying Agreement was terminated on July 31, 2001, except for that portion of the Agreement relating to Regence's payment of "run out" claims, which are claims for health care services rendered to employees or other eligible participants with dates of service on or prior to July 31, 2001.

Simon filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code on

February 25, 2002. All the payments at issue in this case were made to Regence on account of services rendered by Regence, as Claims Administrator, on or within 180 days of the date of the bankruptcy filing.

The Committee brought this adversary proceeding to avoid, pursuant to 11 U.S.C. § 547(b), five payments made by Dick Simon Trucking ("Simon") during the 90-day period before Simon filed for Chapter 11 bankruptcy protection, in an amount totaling $321,269.51.

In the adversary proceeding, Regence filed a motion for partial summary judgment on the issue of whether it would have been entitled to priority status for its claim under 11 U.S.C. § 507(a)(4). The Honorable Glen E. Clark granted Regence's motion, finding that Regence would have had a priority claim pursuant to 11 U.S.C. § 507(a)(4). Judge Clark determined that the Plan constitutes an "employee benefit plan for purposes of 11 U.S.C. § 507(a)(4) and that the phrase "services rendered" in 11 U.S.C. § 507(a)(4) refers to the services rendered by Regence, the party asserting the § 507(a)(4) priority claim. Thus, in order to recover, the Committee of Unsecured Creditors would have to show that the payments made to Regence allowed Regence to receive more than it otherwise would have received.

The Committee disagreed with the Bankruptcy Court's decision, and has appealed to this court, seeking reversal of the decision.

DISCUSSION

Section § 507(a)(4) grants priority status only "for contributions to an employee benefit plan - arising from services rendered within 180 days before the date of the filing of the petition[.]

11 U.S.C. § 507(a)(4)(A).[1]

The Committee argues that the Tenth Circuit has held that priority claims are an exception to the general rule of equal treatment of creditors and should, therefore, be narrowly construed." *See*, *e.g.*, *State Ins. Fund v. Southern Star Foods, Inc. (In re Southern Star Foods, Inc.*, 144 F.3d 712, 714 (10th Cir. 1998)). Given this requirement of narrow construction, the Committee argues that there are two independent reasons why the bankruptcy court erred. First, it argues that the Bankruptcy Court broadly–and improperly–interpreted the term "services rendered" to pertain to a third-party claims administrator. Second, the Committee argues, the Bankruptcy Court improperly concluded that the payment to Regence was a "contribution."

The Committee maintains that the payment was in reality a repayment of credit Regence had extended to Simon to honor Simon's obligations under the self-funded employee benefit plan.

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[1] The statute reads, in pertinent part, as follows:

(a) The following expenses and claims have priority in the following order:

. . .

(4) Fourth, allowed unsecured claims for contribution to an employee benefit plan–

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, but only

(B) for each such plan, to the extent of–

(I) the number of employees covered by each such plan multiplied by $4,925; less

(ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the state on behalf of such employees to any other employee benefit plan.

Thus, according to the Committee, it is no different than if Simon had borrowed the money from a bank.

Regence, on the other hand, urges this court to affirm the Bankruptcy Court's decision. Regence contends that every court that has addressed this specific issue (regarding the priority status of claims administrators) has found that they are entitled to priority status. Regence also argues that the cases cited by the Committee are inapposite because they are narrowly focused on the question of whether workers' compensation insurance premiums are an employee benefit plan protected by section 507(a)(4)–a question that is not present in this case.

Having reviewed the briefing by the parties, the relevant statutory language, and the case law on this issue, the court agrees with Regence that the Bankruptcy Court's decision was correct. The Committee has not provided any authority to rebut Regence's assertion that, "in every published opinion where the § 507(a)(4) claimant served as a claims administrator for a health benefit plan, the court held that the services rendered by the Claims Administrator gave rise to § 507(a)(4) priority status."[2] Indeed, the court is unaware of any published case that does not so hold.

Moreover, a plain reading of the statute indicates that the "services rendered" language refers to the party asserting a claim for contribution. In *In re A.B.C. Fabrics of Tampa, Inc.*, 259

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[2] Regence relies on the following cases: *In re Ivey*, 308 B.R. 752 (M.D.N.C. 2004); *Matter of Loomis Indus., Inc.*, 193 B.R. 615 (Bankr. N.D. Ga. 1996); *Allegheny Int'l v. Metropolitan Life Ins. Co.*, 138 B.R. 171 (Bankr. W.D. Pa. 1992). *See also In re Edward W. Minte Co., Inc.*, 386 B.R. 1,7 (Bankr. D. Col. 2002) (in denying premium reimbursement, the court held that § 507(a)(4) "was intended to protect employees or administrators of employee benefit plans representing their interest.")

B.R. 759 (Bankr. N.D. Fla. 2001), the court found that the 180-day period relates to the date the claims administrator of a self-funded plan provided services: "If the fund or administrator has paid benefits and provided administrative services within 180 days prior to the filing, the obligation of the employer to the fund or administrator should be a debt for contribution to a plan for services rendered within the 180 day period." *Id.* at 767; *see also In re Braniff, Inc.*, 218 B.R. 628 (Bankr. N.D. Fla. 1998) (court rejected argument that the relevant date was the date the underlying medical services were provided to the employee, reasoning that "[u]nder § 507(a)(4)(A), it makes no difference when the claim arose as long as the 'services' to which the claim is related were provided within the 180 day period."); *In re Maxwell Newspapers, Inc.*, 192 B.R. 633 (Bankr. S.D.N.Y 1996) (court found that courts have not even considered tying "service" to that provided by employees, noting that "courts have taken for granted that the provision of insurance constitutes 'services' for purposes of section 507(a)(4)).

Regence's claim for contribution arises from "services rendered" within 180 days of the petition date, as its claim for contribution arose from the services it provided as the Claims Administrator in the week preceding the issuance of each of the invoices at issue, and in all instances within 180 days of the petition date. Upon processing and paying the claims, Regence is entitled to assert a claim against the debtor for the amount paid to health care providers, plus its agreed administrative fee. It is undisputed that Regence's claim arose as a result of the services it rendered as the Claims Administrator of the Dick Simon Benefit Plan.

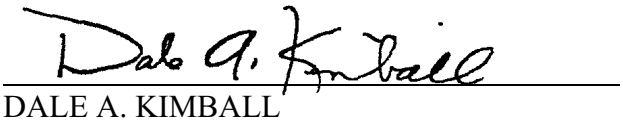
Thus, the court finds that Regence would have been entitled to priority status for its claim under 11 U.S.C. § 507(a)(4) because the Plan constitutes an "employee benefit plan for purposes

of 11 U.S.C. § 507(a)(4), and the phrase "services rendered" in 11 U.S.C. § 507(a)(4) refers to the services rendered by Regence, the party asserting the § 507(a)(4) priority claim.

Accordingly, for the foregoing reasons and good cause appearing, IT IS HEREBY ORDERED that the decision of the Bankruptcy Court is AFFIRMED. Each party is to bear its own costs.

DATED this 19th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FRANK L. SINDAR,	)	
	)	
Plaintiff,	)	Case No. 2:05-CV-1084 PGC
	)	
v.	)	District Judge Paul G. Cassell
	)	
DR. RICHARD GARDEN et al.,	)	**O R D E R**
	)	
Defendants.	)	Magistrate Judge Samuel Alba

Plaintiff, inmate Frank L. Sindar, filed a civil rights complaint.[1] He alleges that prison staff: gave him the wrong drugs, causing heart attacks and strokes; have not gotten his medical records as he asked; fail to take him to specialists as promised; do not treat his heart problems, strokes, and breathing difficulties; "disregarded and mocked" his reports of dizziness, nausea, irritable bowel syndrome, and fainting; and have not tested his blood for heart damage, nor provided needed CT scans and MRIs. Plaintiff also asserts that other prison officials have not responded to his letters asking for their protection, impeded his access to the courts by writing lies, and sullied the grievance process with misrepresentations and lies. Because Plaintiff did not adequately plead that he had exhausted his prison grievances as to each of these claims, the Court ordered him to show cause why his complaint should not be dismissed.

[1] *See* 42 U.S.C.S. § 1983 (2006).

Plaintiff responded, stating, "I have filed through all the greivance [sic] levels to have my medical needs taken care of appropriately. All were denied." He then referred the court to copies of grievance documents that he had attached. Those documents show that one of Plaintiff's medical-treatment claims was exhausted. That claim is one in which Plaintiff asserts he received inadequate medical treatment for his "throat closing from excess mucus." Presumably, this is related to his breathing problems. Plaintiff has not specified that he has exhausted any other of his myriad claims.

As the Court stated in its order to show cause, to pursue his case, Plaintiff must have already totally exhausted all his claims through every prison grievance level.[2] Section 1997e(a) prescribes a pleading prerequisite for prisoners.[3] Consequently, a complaint that does not properly allege the exhaustion of administrative remedies "'is tantamount to one that fails to state a claim upon which relief may be granted.'"[4] A prisoner plaintiff must

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[2]*See id.* § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal Law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.").

[3]*See Steele v. Fed. Bureau of Prisons*, 355 F.3d 1204, 1210 (10th Cir. 2003).

[4]*Id.* (quoting *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998)).

> (1) plead his claims with "a short and plain statement . . . showing that [he] is entitled to relief," in compliance with Fed. R. Civ. P. 8(a)(2), and (2) "attach[] a copy of the applicable administrative dispositions to the complaint, or, in the absence of written documentation, describe with specificity the administrative proceeding and its outcome."[5]

Absent "'particularized averments concerning exhaustion showing the nature of the administrative proceeding and its outcome, the action must be dismissed under § 1997e.'"[6]

Moreover, the Tenth Circuit reads § 1997e(a) as a "total exhaustion" rule, meaning that "'when multiple prison condition claims have been joined . . . § 1997e(a) requires that all available prison grievance remedies must be exhausted as to all of the claims.'"[7] Though Plaintiff shows he fully grieved one of his claims, he has not met the pleading requirement of specifically detailing all three levels of grievances and responses as to any other of his many claims. "[T]he presence of unexhausted claims in [Plaintiff's] complaint require[s this C]ourt to dismiss his action in its entirety without prejudice."[8]

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[5]*Id.* (alterations in original) (quoting *Knuckles El v. Toombs*, 215 F.3d 640, 642 (6th Cir. 2000)).

[6]*Id.* at 1211 (quoting *Knuckles El*, 215 F.3d at 642).

[7]*Ross v. County of Bernalillo*, 365 F.3d 1181, 1188-89 (10th Cir. 2004) (quoting *Graves v. Norris*, 218 F.3d 884, 885 (8th Cir. 2000)).

[8]*Id.* at 1189.

IT IS THEREFORE ORDERED that Plaintiff's complaint is dismissed because he failed to adequately plead that he exhausted all but one of his claims.

DATED this 21st day of September, 2006.

BY THE COURT:

Paul Cassell

PAUL G. CASSELL
United States District Judge

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Thomas Jackson

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:06CR000343-001

USM Number: 13911-081

Julie George
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One of the Felony Information

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2252A (a)(5)(B)	Possession of Child Pornography		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/18/2006
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell — U.S. District Judge
Name of Judge — Title of Judge

9-21-2006
Date

DEFENDANT: Thomas Jackson
CASE NUMBER: DUTX 2:06CR000343-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

31 Months

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the dft be incarcerated at FCI Butner, North Carolina. The Court also strongly recommends the dft serve his sentence in a facility where he can receive mental health treatment and counseling.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before 2 p.m. on 10/16/2006.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Thomas Jackson
CASE NUMBER: DUTX 2:06CR000343-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

120 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☑ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Thomas Jackson
CASE NUMBER: DUTX 2:06CR000343-001

SPECIAL CONDITIONS OF SUPERVISION

1. The dft shall register with the State Sex Offender Registration Agency in any State where the dft resides, is employed, carries on a vocation, or is a student, as directed by the probation office. The Court orders the presentence report may be released to the state agency for purposes of sex offender registration.

2. The dft shall participate in a mental health and/or sex-offender treatment program as directed by the USPO.

3. The dft is restricted from visitation with individuals who are under 18 years of age without adult supervision as approved by the USPO.

4. The dft shall abide by the following occupational restrictions: Any employment shall be approved by the USPO. In addition, if third-party risks are identified, the probation office is authorized to inform the dft's employer of his supervision status.

5. The dft shall not possess or use a computer with access to any 'on-line computer service' without the prior approval of the probation office. This includes any Internet service provider, bulletin board system, or any other public or private computer network. Any approval shall be subject to conditions set by the Court or the probation office. In addition, the dft shall: (A) Not possess or use any public or private data encryption technique or program and (B) Consent to having installed on the dft's computer(s) hardware or software systems to monitor computer usage.

DEFENDANT: Thomas Jackson
CASE NUMBER: DUTX 2:06CR000343-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Thomas Jackson
CASE NUMBER: DUTX 2:06CR000343-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

BRETT L. TOLMAN, United States Attorney (#8821)
DAVE BACKMAN, Assistant United States Attorney (# 8044)
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LUIS CARILLO-HERNANDEZ, Defendant.	: : : : :	Case No. 2:06CR438 TS ORDER GRANTING LEAVE OF COURT TO FILE A DISMISSAL OF THE INDICTMENT

Based upon the motion of the United States of America and for good cause, the Court hereby grants the Government leave under Rule 48(a) of the Federal Rules of Criminal Procedure to dismiss the Indictment against defendant Luis Carillo-Hernandez.

DATED this 21st day of September, 2006.

BY THE COURT:

Ted Stewart
United States District Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WANDA BRIANNE FREHNER, Defendant.	**ORDER TO CONTINUE TRIAL** Case No. 2:06CR491 PGC

Based upon the motion of the Defendant, WANDA BRIANNE FREHNER, through her attorney of record, A. Chelsea Koch, the Court hereby **STRIKES** the trial date currently set for October2-4, 2006, in the above-entitled matter. A status/change of plea hearing is set for November 13, 2006 at 2:30 p.m.

Pursuant to the Speedy Trial Act, 18 U.S.C. § 3161 (h)(8)(A), the Court finds that the ends of justice served by a continuance in this case outweighs the interests of the public and the Defendant in a speedy trial.

Dated this 21st day of September, 2006.

BY THE COURT:

PAUL G. CASSELL
United States District Court Judge

EARL XAIZ, #3572
YENGICH, RICH & XAIZ
Attorneys for Defendant
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Salt Lake City, Utah 84111
Telephone: (801) 355-0320
Fax: (801) 364-6026
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IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN ROSS HARMAN, Defendant.	**ORDER TO ALLOW SUBSTITUTION OF COUNSEL** Case No. 2:06-CR-00518TS Honorable Judge Ted Stewart Magistrate Judge Brooke C. Wells

Based upon motion of counsel and good cause appearing, now therefore;

IT IS HEREBY ORDERED that Earl Xaiz be allowed to substitute as counsel for the Defendant, Steven Ross Harman, replacing Stephen R. McCaughey who has previously entered an appearance of counsel.

SIGNED BY MY HAND this 20th day of September, 2006.

TED STEWART
United States District Court Judge

EARL XAIZ, #3572
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
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IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN ROSS HARMAN, Defendant.	**ORDER GRANTING DEFENDANT'S MOTION TO CONTINUE TRIAL, EXCLUDING TIME, AND VACATING AND RESCHEDULING TRIAL** Case No. 2:06-CR-00518TS Honorable Judge Ted Stewart

The Court, based on motion of counsel, hereby orders that trial in this matter be continued. The Court specifically finds that the ends of justice served by continuing this matter outweigh the best interest of the public and the defendant in a speedy trial. In addition, the Court hereby determines that the period of delay caused by a continuance is excludable in computing the time within which the trial in this matter must commence pursuant to 18 U.S.C. § 3161.

The Order of Continuance, which is based on the specific factor delineated in 18 U.S.C. § 3161(h)(8)(B)(iv), is ordered because failure to grant a continuance in this case would deny the

defendant and his counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. Since defense counsel requests additional time to review discovery, the Court finds that due diligence has been exercised in this matter by all parties. It is therefore

ORDERED that Defendant's Motion to Continue (Docket No. 19) is GRANTED and the time from October 2, 2006, through the date of the new trial is excluded from the calculation of time by which trial must commence under the Speedy Trial Act. It is further

ORDERED that the two-day jury trial in this matter, currently scheduled to begin on the 2nd day of October, 2006, is VACATED and **trial is rescheduled to start at 8:30 a.m. on February 1, 2007.**

DATED this 21st day of September, 2006.

TED STEWART
United States District Court Judge

RICHARD P. MAURO (5402)
Attorney for Defendant
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 363-9500

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER ALLOWING TRAVEL
Plaintiff,	:	
v.	:	Case No. 2:06CR00550
HENRY NGOC NGUYEN,	:	Judge Paul G. Cassell
Defendant.	:	Magistrate Judge Samuel Alba

Based upon the motion of the defendant, Henry Ngoc Nguyen, through his lawyer, Richard P. Mauro and good cause appearing, it is hereby

ORDERED that the defendant, Henry Ngoc Nguyen, be allowed to travel out of the country September 22, 2006 through September 30, 2006.

IT IS FURTHER ORDERED that upon Mr. Nguyen's return to the United States, that he deliver his passport to the United States Probation Office in the District of Utah.

DATED this 21st September, 2006.

Judge Samuel Alba
United States District Court

SUE ELLEN WOOLDRIDGE, Assistant Attorney General
BARCLAY SAMFORD, Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
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Telephone: (801) 524-5682

Attorneys for Federal Defendants

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

OTTO JONES, an individual, RICK TAYLOR, an individual, and BRAD DAVIS, as an individual,

Plaintiffs,

v.

NORMAN Y. MINETA, Secretary, Department of Transportation, J. RICHARD CAPKA, Acting Administrator, Federal Highway Administration, WALTER WAIDELICH, Division Administrator, Federal Highway Administration, Utah Division, and JOHN NJORD, Executive Director, Utah Department oaf Transportation,

Defendants.

FRIENDS OF 114TH SOUTH PROJECT ALTERNATIVE 4,

Defendant/Intervenor

[~~PROPOSED~~ ORDER] GRANTING FEDERAL DEFENDANTS' MOTION FOR LEAVE TO FILE AN OVERLENGTH COMBINATION REPLY IN SUPPORT OF MOTION TO STRIKE EXTRA-RECORD DECLARATIONS AND RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO SUPPLEMENT THE ADMINISTRATIVE RECORD

Case No. 2:06cv00084 BSJ

Honorable Bruce S. Jenkins

The Court has reviewed Federal Defendants' Motion for Leave to File Overlength Combination Reply in Support of Motion to Strike Extra-record Declarations and Response in Opposition to Plaintiffs' Motion to Supplement the Administrative Record. Based on the foregoing motion and good cause appearing, the Court hereby approves the motion and orders that the United States may file an overlength response brief of 22 pages.

IT IS SO ORDERED.

9/20/06
DATED

Hon. BRUCE JENKINS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BETTY M. LISTON, Plaintiff, v. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, a foreign Corporation, Defendant.	ORDER OF DISMISSAL WITH PREJUDICE Civil No. 2:06-cv-00196 Judge Paul G. Cassell

Having been presented with a stipulation for dismissal with prejudice and based on the representation of plaintiff and defendant that the claims between and among them in this matter have been resolved;

It is hereby ORDERED that all claims and causes of action against North American Company for Life and Health Insurance in this action are dismissed with prejudice. Each party will bear her or its own costs.

DATED this 21st day of September, 2006.

BY THE COURT:

Judge Paul G. Cassell
United States District Court

Roger H. Hoole (5089)
Gregory N. Hoole (7894)
HOOLE & KING, L.C.
4276 South Highland Drive
Salt Lake City, Utah 84124
Telephone: 801-272-7556
Facsimile: 801-272-7557

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

SUSAN I. MOSS and JAMAL S. YANAKI, Plaintiffs, v. HEINZ KOPP, KENDRAL HERLIN, AARON D. KENNARD, Solely in his capacity as Sheriff of Salt Lake County, SALT LAKE COUNTY SHERIFF'S OFFICE, and SALT LAKE COUNTY, Defendants.	**ORDER** Civil No. 2:06CV317 TC Judge Tena Campbell

Pursuant to the parties' motion and stipulation,

IT IS HEREBY ORDERED that Plaintiffs' response to the following motions will be due October 6, 2006:

1. Salt Lake County's Motion to Dismiss;

2. Aaron D. Kennard's Motion to Dismiss;

3. Motion to Quash Service of Process or Dismiss Complaint on Behalf of Defendant Heinz Kopp; and

4. Motion to Quash Service of Process or Dismiss Complaint on behalf of Defendant Kendra Herlin.

DATED this 21 day of September, 2006.

Tena Campbell

Honorable Tena Campbell,
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CURTIS RICHMOND, **Plaintiff,** **vs.** **AM SOUTH BANK,** **Defendant.**	**ORDER ADOPTING REPORT AND RECOMMENDATION** **Case No. 2:06CV352 DAK**

This matter is before the court on Plaintiff's Objection to the Magistrate's Report and Recommendation. On May 4, 2006, this case was referred to the Magistrate Judge under 28 U.S.C. § 636(b)(1)(B). On June 15, 2006, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction. After briefing was completed, on September 5, 2006, the Magistrate Judge issued a Report and Recommendation, recommending that Defendant's Motion to Dismiss be granted because the court lacked jurisdiction over the Defendant.

September 18, 2006, Plaintiff filed an Objection, which is styled as "Plaintiff/Claimant Affidavit in Form of Notice and Demand to Vacate Void Judgment Under Fed. Rul 60(b) Void Judgment & Fraud upon the Court by Judge . . . ." The court has reviewed and considered Plaintiff's response to the Report and Recommendation, along with the entire case file.

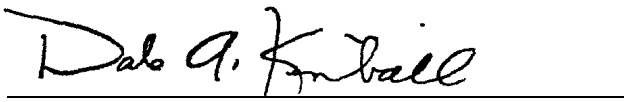
Plaintiff's objection is difficult to decipher, but the focus of his objection appears to be that if the Magistrate Judge and District Court Judge do not "vacate the void dismissal order," then they are both "guilty of treason." Plaintiff, however, has not cited any authority to suggest

that the Magistrate's legal analysis was incorrect, and Plaintiff has not otherwise raised any valid objections to the Report and Recommendation.

Having independently reviewed the file in its entirety, along with the Report and Recommendation, the court hereby APPROVES and ADOPTS the Report and Recommendation in its entirety. Defendant's Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED. Plaintiff's claims against Defendant are DISMISSED without prejudice. The Clerk of Court is directed to close this case.

DATED this 20th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

JIM DECKER, ELLA DUKE-BAXTER, and MAXINE BARNEY, Plaintiffs, vs. UTAH STATE REPUBLICAN BOSS HOGS, MARK TOWNER, HONORABLE SANDRA PEULER, Defendants.	MEMORANDUM DECISION AND ORDER DISMISSING COMPLAINT Case No. 2:06-CV-396 TS

This matter is before the Court for review of the Complaint. Plaintiffs are proceeding pro se and *in forma pauperis*. Because Plaintiffs were granted permission to proceed *in forma pauperis*, the provisions of the *in forma pauperis* statute, § 1915,[1] are applicable. Under §1915 the Court shall, at any time, sua sponte dismiss the case if the Court determines that the Complaint is frivolous or fails to state a claim upon which relief may be granted.[2] A claim is frivolous if it "lacks an arguable basis either in law or in fact."[3] The

[1]28 U.S.C. § 1915.

[2]28 U.S.C. § 1915(e)(2).

[3]*Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Court reviews the Complaint to determine if it is sufficient to state a claim upon which relief can be granted. In construing the Complaint, the Court "presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff"[4] and will not dismiss a Complaint for failure to state a claim "unless it appears beyond doubt the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[5] But "conclusory allegations without supporting factual averments are" not sufficient.[6]

Because Plaintiffs proceed pro se, the Court must construe their pleadings liberally and hold their submissions to a less stringent standard than formal pleadings drafted by lawyers.[7] This means that "if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." [8] No special legal training is required to recount facts surrounding an alleged injury, and pro se litigants must allege sufficient facts, on which a recognized legal claim could be based.[9]

Pro se plaintiffs "whose factual allegations are close to stating a claim but are missing some important element that may not have occurred to [them], should be allowed

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[4] *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

[5] *Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

[6] I*d.* at 1110.

[7] *Id*.

[8] *Id*.

[9] *Id.*

to amend [their] complaint."[10] Thus, "pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings,"[11] and the Court should dismiss the claim "only where it is obvious that he cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend."[12]

Construing the Complaint in accord with these principles, the Court finds that it fails to state a claim for relief. Pursuant to § 1983, Plaintiffs bring a claim against one individual, one state court Judge, and, construing the complaint liberally, appears to be a political organization. Although Plaintiffs use the pre-printed Civil Rights Complaint form available for individuals proceeding pro se, the form is largely blank.[13] The blanks include the spaces provided for pro se litigants to list their causes of action and supporting facts. In response to the question: "Was the defendant acting under the authority or color of state law at the time these claims occurred?" Plaintiffs responded "Possibly?" Thus, Plaintiffs make no allegations that these Defendants took any actions and list no causes of action. Plaintiffs attach two items to their Complaint. The first is a proposed Order that would order "Federal law enforcement officers" to accompany a non-party to a political convention to be held on May 13, 2006, for the purpose of preventing any person from interfering with that non-party's exercise of various rights. The second is two copies of an article from a newspaper that appears to report on an injunction issued by the state court judge defendant. Construing the Complaint liberally, it appears that Plaintiffs seek to challenge

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[10]*Id*. (citing *Reynoldson v. Shillinger*, 907 F.2d 124, 126-27 (10th Cir. 1990)).

[11]I*d.* at 1110 n. 3.

[12]*Perkins v. Kan. Dept. of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999).

[13]Docket No. 3, Complaint.

an injunction issued by a state court against a non–party. This does not state a claim for a violation of the Plaintiffs' constitutional rights.

In order to state a claim under § 1983 a plaintiff must allege '(1) a violation of rights protected by the federal Constitution or created by federal statute or regulation, (2) proximately caused (3) by the conduct of a 'person' (4) who acted under color of any statute, ordinance, regulation, custom, or usage, of any State."[14] It is not necessary that Plaintiffs accurately cite or even formally identify the constitutional right at issue, so long as their factual allegations can be reasonably read to state a valid claim.[15]

In this case, Plaintiffs do not allege the violation of any of their own constitutional rights. Plaintiffs have no standing to assert any violation of a constitutional right of any other individuals.[16] Among other reasons, pro se parties may only represent themselves, not other individuals or entities. Further, it appears that any complaint Plaintiffs sought to bring regarding a convention to be held in May 2006, is moot at this time.

Based upon the foregoing it is

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[14]*Beedle v. Wilson*, 422 F.3d 1059, 1064 (10th Cir. 2005) (quoting *Summum v. City of Ogden*, 297 F.3d 995, 1000 (10th Cir. 2002)).

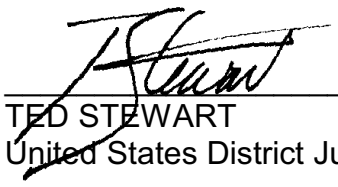
[15]*Lattimore v. RKK Enters., Inc.*, 91 F.3d 159 (10th Cir. 1996) (citing *Hall*, 935 F.2d at 1110.

[16]See 28 U.S.C. § 1654 (providing that "parties may plead and conduct their own cases personally") (emphasis added).

ORDERED that pursuant to 28 U.S.C. § 1915, the Complaint is DISMISSED for the failure to state a claim. The clerk of court is directed to close this case.

DATED September 21, 2006.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

BENEFICIAL INTERNATIONAL, INC., a Utah Corporation, Plaintiff, v. THE BODY DETOX, INC., a Nevada corporation, J. LYNN WILDE, an individual, and CHRISTOPHER P. WILDE, an individual. Defendants.	**ORDER DENYING MOTION TO DISMISS** Civil No. 2:06CV00468 Judge Paul G. Cassell

Defendants' Motion to Dismiss came before the court on September 13, 2006, at 3:00 p.m. Plaintiff was represented by Jonathon D. Parry, of counsel, and Richard M. Matheson of the law firm of Matheson & Peshell, LLC, and defendants were represented by Donald J. Winder, John W. Holt and R. Dennis Flynn of the law firm Winder & Haslam, P.C.

The court having received and reviewed the Motion to Dismiss and the memoranda and affidavits filed in support of and in opposition to the motion; having heard oral argument from counsel; and being otherwise fully advised on the issue, hereby ORDERS that defendants' Motion to Dismiss is denied for the reasons indicated from the bench at the hearing.

ENTERED this 21st day of September, 2006.

BY THE COURT

Paul G. Cassell,
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

BENEFICIAL INTERNATIONAL, INC., a Utah corporation Plaintiff, vs. THE BODY DETOX, a Nevada corporation, J. LYNN WILDE, an individual, CHRISTOPHER P. WILDE, an individual, Defendants.	**ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION** Civil No.: 2:06CV00468 Judge Paul G. Cassell

Plaintiff's motion for preliminary injunction came before the court on September 13, 2006, at 3:00 p.m. Plaintiff was represented by Jonathan D. Parry, of counsel, and Richard M. Matheson of the law firm of Matheson & Peshell, LCC, and defendants were represented by Donald J. Winder, John W. Holt and R. Dennis Flynn of the law firm Winder & Haslam, P.C.

The court having received and reviewed the motion for preliminary injunction and the memoranda and affidavits filed in support of and in opposition to the motion; having heard oral argument from counsel; and being otherwise fully informed, hereby ORDERS that plaintiff's Motion for Preliminary Injunction is denied for the reasons indicated from the bench at the hearing.

ENTERED this 21st day of September, 2006.

BY THE COURT

Paul G. Cassell,
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

MOUNTAIN AMERICA FEDERAL CREDIT UNION, a federally chartered credit union, **Plaintiff,** **v.** **FRANK GODFREY, an individual; and WELLS FARGO INVESTMENTS, LLC,** **Defendants.**	**STIPULATED PROTECTIVE ORDER** **Case No. 2:06-cv-00481-TS-PMW** **Judge Ted Stewart** **Magistrate Judge Paul M. Warner**

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Ted Stewart pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court is the parties' joint motion for entry of a stipulated protective order.[1]

Based on the stipulation of the parties, and good cause appearing therefor, the court hereby makes the following order regarding confidentiality:

1. All documents stamped "Confidential" by the producing party will be designated as Confidential Documents and shall not be used by any party for any purpose other than this case. The producing party shall stamp as confidential only those documents that it considers to in good faith to be confidential. Upon appropriate motion, the court may determine that a

[1] Docket no. 31.

document stamped confidential should not be protected. Documents that are not stamped confidential will not be considered confidential. Confidential Documents shall not be disclosed or given as copies to anyone, except to the parties and to persons retained or employed by counsel or by a party to assist in the preparation and trial of this action, including expert witnesses, consultants, clerical employees, and secretaries. Any person to whom such disclosure is made shall be advised of, and become subject to, the provisions herein requiring that Confidential Documents be held in confidence. This paragraph, however, shall not preclude showing any document or disclosing any Confidential Document to a third party witness during the litigation of this matter, provided such witness is not given a copy of any such Confidential Document to keep, and provided further that such witness is advised that such person is subject to the provisions of this protective order.

2. The documents identified in the paragraph above shall be used for purposes of this proceeding only and shall not be disclosed or used for any other purpose whatsoever, including for business or governmental purpose or for any administration or other judicial proceeding, except for any litigation directly arising from this proceeding.

3. Confidentiality of these documents and related materials is to be maintained both during and after disposition of this case. Within thirty (30) days after the conclusion of this action by judgment or settlement, all Confidential Documents and copies of documents subject to this stipulation shall be returned to the producing party.

4. This stipulation may only be amended or modified by an agreement, in writing, signed by the parties, or by further order of the court.

DATED this 21st day of September, 2006.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

Ruth A. Shapiro, 9356
Phillip S. Ferguson, 1063
CHRISTENSEN & JENSEN, P.C.
Attorneys for Defendant
50 South Main Street, Suite 1500
Salt Lake City, Utah 84144
Telephone: (801) 323-5000

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

AMY R. HUGGARD, individually and as personal representative of the estate of JOSHUA HUGGARD, deceased, and as the parent and next friend of HAILY HUGGARD; and BECKY MECHAM, parent and next friend of TERESA HUGGARD, Plaintiffs, vs. GALBREATH INCORPORATED, a corporation, and Does 1-10, Defendants.	Civil No. 2:06cv00560 BSJ **ORDER DENYING PLAINTIFFS' MOTION TO REMAND**

Based upon the pleadings filed by the parties and oral argument conducted on September 18, 2006, IT IS HEREBY ORDERED that plaintiffs' Motion to Remand is DENIED. Each party will bear its own costs and fees.

DATED this 20 day of September, 2006.

BY THE COURT:

Honorable Bruce S. Jenkins
U.S. District Court Judge

Approved as to Form:

/s/ P. Christian Hague

(Signed copy of document bearing signature of P. Christian Hague is being maintained in the office of the filing attorney)

P. Christian Hague
Joseph E. Tesch
Stephanie K. Matsumura
TESCH LAW OFFICES, P.C.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on the 19th day of September, 2006, a true and correct copy of the foregoing ORDER DENYING PLAINTIFFS' MOTION TO REMAND was faxed (435 649-2561) and mailed, first-class postage prepaid, to:

P. Christian Hague
Joseph E. Tesch
Stephanie K. Matsummura
TESCH LAW OFFICES, P.C.
PO Box 3390
314 Main Street, Suite 200
Park City UT 84060-3390
Attorneys for Plaintiffs

/s/ Marilyn Smyth, Secretary

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

INDER SINGH, **Plaintiff,** **vs.** **GREYHOUND BUS LINES, et al.,** **Defendants.**	**ORDER** **Case No. 2:06CV608 DAK**

On July 25, 2006, this matter was transferred from the Central District of California. Prior to the transfer, Defendant had filed two Motions to Dismiss, which are currently pending. Although the case was transferred almost two months ago, Plaintiff has failed to enter an appearance or to have an attorney enter an appearance.

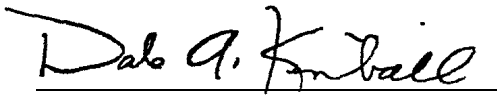
IT IS HEREBY ORDERED that by no later than October 3, 2006, Plaintiff must notify the court of the appointment of an attorney or of his decision to appear *pro se* (*i.e.*, to represent himself in this action). Accordingly, by no later than October 3, 2006, (1) Plaintiff's counsel must file with the court a Notice of Appearance, or (2) Plaintiff must file a Notice of Intent to Proceed *Pro Se.* Such a Notice must provide Plaintiff's address and telephone number. Failure to so notify the court and opposing counsel by October 3, 2006 will result in dismissal of this action.

In addition, Defendant's Motions to Dismiss have been pending since June 2006. Plaintiff has failed to respond to the motions in a timely manner. Nevertheless, because of the

transfer from Central District of California, the court will grant Plaintiff additional time to respond. Plaintiff's responses to these motions are due no later than November 13, 2006. Defendant will then have the time provided by the local rules to reply to Plaintiff's responses. At that time, the court will determine whether oral argument is necessary to decide the motions.

DATED this 20th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

United States District Court
for the
District of Utah
September 21, 2006

******MAILING CERTIFICATE OF THE CLERK******

RE: Singh v. Greyhound Bus Lines
2:06-cv-608-DAK

Ramin R. Younessi
LAW OFFICES OF RAMIN R. YOUNESSI
3435 WILSHIRE BLVD STE 2370
LOS ANGELES, CA 90010

Bonnie King,

JONATHAN A. DIBBLE (A0881)
PAUL C. BURKE (A7826)
RAY, QUINNEY & NEBEKER, P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145
Telephone: (801) 532-1500

Attorneys for Defendant Willard InterContinental Washington D.C.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

BASIC RESEARCH, L.L.C., a Utah limited liability company, Plaintiff vs. **WILLARD INTERCONTINENTAL WASHINGTON D.C.**, and John Doe Corporations I-X. Defendants.	**ORDER GRANTING JOINT MOTION TO EXTEND TIME TO RESPOND TO COMPLAINT** Civil No. 2:06CV00626TS Judge: Ted Stewart

Based on the stipulation of the parties, and for good cause appearing, this Court orders that the time for Defendant Willard InterContinental Washington D.C. to answer, move, or otherwise plead in response to the Complaint shall be extended until October 10, 2006.

DATED this 20th day of September, 2006.

BY THE COURT:

United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KLEIN-BECKER USA, LLC, a Utah Limited Liability Company; KLEIN-BECKER IP HOLDINGS, LLC, a Nevada Limited Liability Company; and BASIC RESEARCH, LLC, a Utah Limited Liability Company, Plaintiffs, v. VITABASE.COM, LLC, an expired Georgia Limited Liability Company; COAD INC., a Georgia Corporation; OB LABS; GREG HOWLETT, an individual, and JOHN DOES 1-10, Defendants.	ORDER GRANTING CONSENT MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT AND PRELIMINARY INJUNCTION Case No. 2:06-CV-00668 PGC

This cause has come before the court upon defendant Greg Howlett's motion for an extension of time to respond to the complaint and the motion for a preliminary injunction. Although the motion for an extension of time appears to apply only to Greg Howlett, the court has conferred with counsel on both sides and will treat the motion as applying to all named defendants. The court having considered this motion and being otherwise duly advised, hereby

GRANTS defendants' motion for an extension of time [#33]. The defendants have until September 21 and 22, 2006, to file their response to the complaint and the motion for a

preliminary injunction, respectively.

DATED this 21st day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

NATE BOZUNG, Plaintiff, vs. TECHNINE, INC., and JOHN DOES 1–X, Defendants.	ORDER GRANTING STIPULATED MOTION EXTENDING TIME TO FILE AN ANSWER Case No. 2:06cv691

Upon review, the court GRANTS the Stipulated Motion Extending Time to File an Answer to the Complaint by the Defendant, for good cause shown [#3]. The court grants the defendant, Technine, Inc., an extension of time in which to file an answer or other appropriate pleading in response to the plaintiff's complaint. Technine must properly respond to the complaint on or before October 13, 2006.

DATED this 21st day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

STORESONLINE, INC., a Delaware corporation, Plaintiff	:	
	:	ORDER FOR PRO HAC VICE ADMISSION
v.	:	
CAPTURES.COM, INC., a Washington corporation, and WEB MARKETING SOURCE.COM, a Washington corporation. Defendants.	:	Case No. 2:06-CV-00722-DB

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Julia A. Youngs in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 20th day of September, 2006.

Dee Benson
U.S. District Judge

AO 240A (Rev. 12/03)

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

John A. Campbell

Plaintiff

V.

Township of Brick, NJ

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

C/ Judge Bruce S. Jenkins
DECK TYPE: Civil
DATE STAMP: 09/21/2006 @ 15:13:42
CASE NUMBER: 2:06CV00802 BSJ

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☑ GRANTED.

☐ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 20th day of September, 2006.

Signature of Judge

Magistrate Judge Paul M. Warner
Name and Title of Judge

AO 240A (Rev. 12/03)

FILED
DISTRICT COURT
2006 SEP 21 P 3:04
DISTRICT OF UTAH
BY: DEPUTY CLERK

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

Sherry R. Darity

Plaintiff

V.

Jo Anne B. Barnhart
Commissioner, Social Security Adminstration

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge Paul G. Cassell
DECK TYPE: Civil
DATE STAMP: 09/21/2006 @ 15:14:27
CASE NUMBER: 2:06CV00803 PGC

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☑ GRANTED.

☐ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 20th day of September, 2006.

Signature of Judge

Magistrate Judge Paul M. Warner
Name and Title of Judge

AO 94 (Rev. 8/97) Commitment to Another District

UNITED STATES DISTRICT COURT

District of

UNITED STATES OF AMERICA
V.
David Glenn Cox

COMMITMENT TO ANOTHER DISTRICT

DOCKET NUMBER		MAGISTRATE JUDGE CASE NUMBER	
District of Arrest	District of Offense	District of Arrest	District of Offense
	06-01206-mjw	WE-06-295	

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
SEP 21 2006
MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

CHARGES AGAINST THE DEFENDANT ARE BASED UPON AN

☐ Indictment ☐ Information ☒ Complaint ☐ Other (specify)

charging a violation of 18 U.S.C. § 2113 (a)

DISTRICT OF OFFENSE Colorado

DESCRIPTION OF CHARGES: Bank Robbery

CURRENT BOND STATUS:

☐ Bail fixed at and conditions were not met
☐ Government moved for detention and defendant detained after hearing in District of Arrest
☒ Government moved for detention and defendant detained pending detention hearing in District of Offense
☐ Other (specify)

Representation: ☐ Retained Own Counsel ☒ Federal Defender Organization ☐ CJA Attorney ☐ None

Interpreter Required? ☒ No ☐ Yes Language:

DISTRICT OF

TO: THE UNITED STATES MARSHAL

You are hereby commanded to take custody of the above named defendant and to transport that defendant with a certified copy of this commitment forthwith to the district of offense as specified above and there deliver the defendant to the United States Marshal for that District or to some other officer authorized to receive the defendant.

9/20/06
Date

Brooke C. Wells
United States Judge or Magistrate Judge

RETURN

This commitment was received and executed as follows:

DATE COMMITMENT ORDER RECEIVED	PLACE OF COMMITMENT	DATE DEFENDANT COMMITTED

DATE	UNITED STATES MARSHAL	(BY) DEPUTY MARSHAL

UNITED STATES DISTRICT COURT

CENTRAL DIVISION District of UTAH

UNITED STATES OF AMERICA
V.
LAWRENCE A. KRASNY

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 298CR000278-006

USM Number: 18729-148

Rebecca Hyde
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Felony Information

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
15 USC §§ 77q(b) and 77x	Undisclosed Compensation		1s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) the Indictment ☑ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/19/2006
Date of Imposition of Judgment

Signature of Judge

Ted Stewart U. S. District Judge
Name of Judge Title of Judge

9/20/2006
Date

DEFENDANT: LAWRENCE A. KRASNY
CASE NUMBER: DUTX 298CR000278-006

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

15 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Incarceration in Terminal Island, CA or LOMPOC, CA, if consistent with defendant's medical needs.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before 2 p.m. on 11/20/2006 .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LAWRENCE A. KRASNY
CASE NUMBER: DUTX 298CR000278-006

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

1) The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.

2)The defendant is to inform any employer or prospective employer of his current conviction and supervision status.

3) The defendant shall abide by the following occupational restrictions: * The defendant is prohibited from participating in any manner in the affairs of any federally regulated financial institution; *The defendant shall not have direct or indirect control over the assets or funds of others, and; *The defendant shall not be self-employed.

4) The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with any established payment schedule and obtains the approval of the probation office.

5) The defendant shall provide the probation office access to all requested financial information.

DEFENDANT: LAWRENCE A. KRASNY
CASE NUMBER: DUTX 298CR000278-006

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 50.00	$ 15,000.00	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☑ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LAWRENCE A. KRASNY
CASE NUMBER: DUTX 298CR000278-006

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 50.00 due immediately, balance due

☐ not later than _____ , or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

$15,000 fine is payable at a rate of $500/month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,

which will be docketed

separately as a sealed

document

United States District Court
District of Utah

UNITED STATES OF AMERICA

vs.

Anthony Lee Archuleta

(For Revocation of Probation or Supervised
(For Offenses Committed On or After November 1, 1987)

Case Number: DUTX **2:99-cr-000244-001 DB**

Plaintiff Attorney: **Mark Vincent**

Defendant Attorney: **Tiffany Johnson**

Atty: CJA ___ Ret ___ FPD ✖

Defendant's Soc. Sec. No.: **N/A**

Defendant's Date of Birth: **1959**

09/19/2006
Date of Imposition of Sentence

Defendant's USM No.: **07693-081**

Defendant's Residence Address:
Salt Lake City, Utah

Salt Lake City, Utah
Country

Defendant's Mailing Address:
Salt Lake City, Utah

Salt Lake City, Utah
Country

THE DEFENDANT:

COP N/A Verdict _____

✖ admitted to allegation(s) **1 and 2**

☐ pleaded nolo contendere to allegation(s) _____ which was accepted by the court.

☐ was found guilty as to allegation(s) _____

Violation Number	Nature of Violation	Date Violation Occured
1	Fleeing causing property damage, Driving motor vehicle on suspended/revoked license and assualt domestic violence	05/17/2006
2.	Failure to notify probation office within 72 hours of being arrested	N/A

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **6 months with credit for time already served in state custody.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **24 months.**.

☐ The defendant is placed on Probation for a period of _____.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall submit to electronic monitoring for a period of 90 days. The defendant shall comply with all of the terms and conditions set forth in the Home Confinement Program Participant Agreement as provided by the probation office. The defendant shall remain in his residence at all times, except for approved leave as deemed appropriate by the probation office.

2. The defendant will submit to drug/alcohol testing as directed by the probation office.

3. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan, as directed by the probation office, and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

4. The defendant shall participate in a mental health treatment, to include domestic violence treatment under a co-payment plan as directed by the probation office.

5. The defendant shall not use alcohol, nor frequent businesses where alcohol is the chief item of business.

6. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches, pursuant to this condition.

7. The Court orders the $70.00 urinalysis fee ordered on January 26, 2000, for the original offense be reinstated.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of $ _____ , payable as follows:

☐ forthwith.

☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☒ other: _____

No Fine Imposed

☐ The defendant shall pay interest on any fine more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

Name and Address of Payee	Amount of Loss	Amount of Restitution Ordered

Totals: $_____ $_____

(*See* attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other:

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of $ _____ , payable as follows:

☐ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

Defendant: Anthony Lee Archuleta
Case Number: 2:99-cr-000244-001 DB

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

CUSTODY/SURRENDER

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 09/20/2006

Dee Benson

Dee Benson
United States District Judge

Defendant: Anthony Lee Archuleta
Case Number: 2:99-cr-000244-001 DB

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal